

Supreme Court, U. S.
FILED
JAN 26 1976
~~MICHAEL RODRIGUE~~, CLERK

JOINT APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM 1975

No. 75-817

NEBRASKA PRESS ASSOCIATION, et al.,
Petitioners,
v.

THE HONORABLE HUGH STUART, JUDGE, DISTRICT COURT IN
AND FOR LINCOLN COUNTY, NEBRASKA, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of Nebraska

Motion to Treat Previously Filed Papers
Petition for a Writ of Certiorari Granted December 8, 1975
Certiorari Granted December 12, 1975
Amended Petition for a Writ of Certiorari Filed December 24, 1975

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Relevant Docket Entries and Proceedings

DATE—PROCEEDINGS

1975

October 19—Complaint filed in *State of Nebraska v. Simants*

October 19—Simants arraigned; Co. Court sustain County Attorney's notice to close part of arraignment hearing over Simants' objection; County Court order preliminary hearing to be held October 22, 1975.

October 21—Co. Court grants County Attorney's motion for restrictive order, overrules Simants' motion to close preliminary hearing to public.

October 22—Co. Court enters restriction order and order Simants bound over for trial to the District Court after Preliminary Hearing.

October 27—Dist. Ct. terminates County Court order of October 22 and enters new restrictive order after hearing.

October 31—Petitioners file notice of appeal in Dist. Ct.

October 31—Petitioners file application for leave to docket an original action, No. 40471 in the Supreme Court of Nebraska.

November 4—Transcript on appeal filed in Supreme Court of Neb., No. 40445, with motion to advance appeal.

November 5—Petitioners file application for stay with Mr. Justice Blackmun, No. A-426.

November 10—Neb. Sup. Ct. enters per curiam order declining to act.

November 13—Mr. Justice Blackmun enters order neither granting nor denying stay in No. A-426.

November 18—Neb. Sup. Ct. enters order for hearing and order to show cause in No. 40471 and No. 40445, granting petitioners leave to file an original action.

November 20—Mr. Justice Blackmun enters order granting in part and denying in part stay application in No. A-426.

November 24—County Attorney and Simants file petition in intervention in Neb. Sup. Ct.

November 25—Hearing held before Neb. Sup. Ct.

December 1—Neb. Sup. Ct. issues order and opinion in No. 40445 and No. 40471, and grants State of Nebraska and Erwin Simants leave to intervene in No. 40471.

OPINIONS AND ORDERS OF THE COURTS BELOW

The opinions of the County Court of Lincoln County, Nebraska, dated October 22, 1975, and the District Court of Lincoln County, Nebraska, dated October 27, 1975, are set forth at pages 1a and 9a of the Appendix to the Amended Petition for a Writ of Certiorari (hereinafter "Cert. A"). The *per curiam* statement of the Nebraska Supreme Court issued on November 10, 1975, is set forth at Cert A 19a. The opinion of Mr. Justice Blackmun dated November 13, 1975, is set forth at Cert A 21a. The Order of the Nebraska Supreme Court for Hearing and Order to Show Cause entered on November 18, 1975, is set forth at Cert A 29a. The opinion of Mr. Justice Blackmun dated November 20, 1975, is set forth at Cert A 35a. The majority, concurring and dissenting opinions of the Nebraska Supreme Court dated December 1, 1975, are set forth at Cert A 44a and are reported at 63 Neb. S.C.J. 783, — N.W.2d —. The Orders of this Court, dated December 8, 1975, and December 12, 1975, which, *inter alia*, granted the motion for petitioners to treat papers previously filed by them with this Court as a Petition for a Writ of Certiorari to the Supreme Court of Nebraska and granted said Petition are set forth at Cert A 70a and 71a. Except as indicated above, none of said opinions is thus far reported.

SUPREME COURT OF NEBRASKA

—
No. 40471
—

STATE OF NEBRASKA, ex rel. NEBRASKA PRESS
ASSOCIATION et al.

v.

STUART

—
EXCERPTS FROM TRANSCRIPT

Exhibit A1

Filed Oct. 14, 1975—Ronald A. Ruff, County Judge
Filed Oct. 29, 1975—I. L. Boyle, Clerk District Court

IN THE COUNTY COURT OF LINCOLN COUNTY, NEBRASKA

COMPLAINT

(28-401)

THE STATE OF NEBRASKA, *Plaintiff*

vs.

ERWIN CHARLES SIMANTS, *Defendant*

STATE OF NEBRASKA,
COUNTY OF LINCOLN

Milton R. Larson, County Attorney of Lincoln County, Nebraska, for and in the name of the State of Nebraska, complains before a County Judge of Lincoln County, Nebraska that

ERWIN CHARLES SIMANTS

Defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully,

COUNT I

purposely and of deliberate and premeditated malice, kill another, to wit: Henry Kellie; and

COUNT II

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice, kill another, to wit: Audrey Marie Kellie; and

COUNT III

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice, kill another, to wit: David Kellie; and

COUNT IV

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice, kill another, to wit: Daniel Kellie; and

COUNT V

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice, kill another, to wit: Deanne Kellie; and

COUNT VI

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice, kill another, to wit: Florence Kellie; contrary to the statutes of the State of Nebraska.

/s/ MILTON R. LARSON
County Attorney

SUBSCRIBED and sworn to before me on October 19, 1975.

/s/ RONALD A. RUFF
County Judge

[SEAL]

Filed Oct. 29, 1975—Ronald A. Ruff, County Judge

IN THE COUNTY COURT IN AND FOR LINCOLN COUNTY, NEBRASKA

Case No. 75-789

THE STATE OF NEBRASKA, *Plaintiff*

vs.

ERWIN CHARLES SIMANTS, *Defendant*

JOURNAL ENTRY

NOW ON THIS 19th day of October, 1975, this matter came on for arraignment. The defendant was present in Court in the custody of the Sheriff of Lincoln County, Nebraska. The State of Nebraska was represented by Milton R. Larson, County Attorney, and Marvin L. Holscher, Chief Deputy County Attorney. The Honorable Ronald A. Ruff presided.

The Court identified the persons present and advised the defendant of the nature of the proceedings. The complaint was read to the defendant. The Court read Section 28-401, 1975 Supp. to the defendant. The defendant was thereupon advised of his constitutional rights. The defendant advised the Court that he desired an attorney to represent him but that he did not have funds to employ his own attorney. The Court thereupon appointed Keith Bystrom, Public Defender, and Leonard P. Vyhalek, Assistant Public Defender, who were present in Court at the time, to represent the defendant.

The County Attorney requested that bail not be set. The County Attorney also advised the Court that since proof concerning bail would be required under Section 9 of Article 1, of the Constitution of the State of Nebraska and that such proof would be prejudicial to the rights of the defendant to later obtain a fair trial, that the Hearing on bail should be closed. The defendant objected. The Court sustained the Motion and directed that all spectators in the Court remove themselves from the Courtroom. The State then advised the Court what the evidence would show, if the witnesses were called to testify. Immediately thereafter, the spectators were permitted to return to open Court. Thereupon the Court being duly advised in the premises found that a Preliminary Hearing on the complaint filed herein, should be held on October 22, 1975, commencing at the hour of 9:00 a.m., and that bail should be denied.

IT IS THEREFORE ORDERED that a Preliminary Hearing be held upon the complaint filed herein October 22, 1975, commencing at 9:00 a.m.

IT IS FURTHER ORDERED that bail be denied.

BY THE COURT
/s/ RONALD A. RUFF
County Judge

[SEAL]

Exhibit B

Filed Oct. 21, 1975—Ronald A. Ruff, County Judge

IN THE COUNTY COURT OF LINCOLN COUNTY, NEBRASKA

Case No. 75-789

THE STATE OF NEBRASKA, Plaintiff

vs.

ERWIN CHARLES SIMANTS, Defendant

MOTION FOR RESTRICTIVE ORDER

The State of Nebraska hereby represents unto the Court that by reason of the nature of the above-captioned case, there has been, and no doubt there will continue to be, mass coverage by news media not only locally but nationally as well; that a preliminary hearing on the charges has been set to commence at 9:00 a.m. on October 22, 1975; and there is a reasonable likelihood of prejudicial news which would make difficult, if not impossible, the impaneling of an impartial jury and tend to prevent a fair trial should the defendant be bound over to trial in the District Court if testimony of witnesses at the preliminary hearing is reported to the public.

WHEREFORE the State of Nebraska moves that the Court forthwith enter a Restrictive Order setting forth the matters that may or may not be publicly reported or disclosed to the public with reference to said case or with reference to the preliminary hearing thereon, and to whom said order shall apply.

DATED this 21st day of October, 1975.

THE STATE OF NEBRASKA,

By /s/ **MILTON R. LARSON**

Milton R. Larson

County Attorney

I hereby certify that on this 21st day of October, 1975, I delivered a copy of the foregoing Motion to the attorneys for the defendant.

/s/ **MILTON R. LARSON**

It Is THEREFORE ORDERED that a Preliminary Hearing be held upon the complaint filed herein October 22, 1975, commencing at 9:00 a.m.

It Is FURTHER ORDERED that bail be denied.

BY THE COURT

/s/ **RONALD A. RUFF**
County Judge

[SEAL]

Filed Oct. 29, 1975—Ronald A. Ruff, County Judge

IN THE COUNTY COURT IN AND FOR LINCOLN COUNTY, NEBRASKA

Case No. 75-789

THE STATE OF NEBRASKA, Plaintiff

vs.

ERWIN CHARLES SIMANTS, Defendant

JOURNAL ENTRY

Now on this 21st day of October, 1975, at 7:30 p.m., this matter came on for Hearing upon the Motion of the State of Nebraska for a Restrictive Order. The defendant was present in open Court and represented by his attorneys, Leonard P. Vyhalek, and Keith Bystrom. The State of Nebraska was represented by Milton R. Larson, County Attorney, and Marvin L. Holscher, Chief Deputy County

Attorney. Also present was Mr. Harold Kay, who represented various news media, who were also present. The Honorable Ronald A. Ruff presided.

Said matter then came on for Hearing upon the State's Motion for a Restrictive Order. Mr. Vyhalek advised the Court that the defendant consented to the State's Motion, but at the same time, the defendant thereupon moved that the Preliminary Hearing, herein, should be closed to all persons except those persons participating in the Hearing. Mr. Vyhalek also objected that the news media had no right to intervene in this matter. Arguments were then presented to the Court by counsel and the Court took the matter under advisement.

The Court after being duly advised in the premises finds that the State's Motion should be sustained and that the Protective Order should be entered.

IT IS THEREFORE ORDERED that the Protective Order, which is being simultaneously executed herewith shall be and hereby is entered.

IT IS FURTHER ORDERED that the Motions of the State and of the defendant to sequester all witnesses at the Preliminary Hearing be and hereby are sustained.

BY THE COURT

/s/ RONALD A. RUFF
County Judge

[SEAL]

Filed Oct. 29, 1975—Ronald A. Ruff, County Judge

IN THE COUNTY COURT IN AND FOR LINCOLN COUNTY, NEBRASKA

Case No. 75-789

THE STATE OF NEBRASKA, Plaintiff
vs.

ERWIN CHARLES SIMANTS, Defendant

JOURNAL ENTRY

NOW ON THIS 22nd day of October, 1975, this matter came on for Preliminary Hearing. The defendant was present in open Court and represented by his attorneys, Leonard P. Vyhalek, and Keith Bystrom. The State of Nebraska was represented by Milton R. Larson, County Attorney, Marvin L. Holscher, Chief Deputy County Attorney, and John P. Murphy, Deputy County Attorney. The Honorable Ronald A. Ruff presided.

Mr. Harold Kay, attorney for various news media, made a statement to the Court.

The Court then made a statement, and read the Protective Order with respect to pre-trial publicity.

The defendant was thereupon arraigned upon the Amended Complaint. The defendant was again advised of his constitutional rights. Defendant's Motion to require the State to elect was overruled.

Evidence was adduced by the State and a noon recess was taken at 11:45 a.m. The State continued the introduction of evidence at 1:00 p.m. The Court again read the Protective Order with respect to the pre-trial publicity. The Court ordered that State's Exhibits 1, Exhibit 2, and Exhibit 3, be sealed in an envelope by the Court, and that the same not be opened except by order of the Court. The

State rested. The defendant offered no evidence. The defendant's Motion to dismiss Count II, Count III, Count IV, and Count V was overruled.

The Court being duly advised in the premises finds that the offenses charged in the complaint have been committed, and that there is probable cause to believe that Erwin Charles Simants, defendant, committed the offenses.

IT IS THEREFORE ORDERED that the defendant, Erwin Charles Simants, be and he hereby is bound over to the District Court of Lincoln County, Nebraska to stand trial upon all six (6) counts charged in the Amended Complaint.

IT IS FURTHER ORDERED that the defendant be held without bail.

BY THE COURT

/s/ RONALD A. RUFF
County Judge

[SEAL]

Affidavit of Kiley Armstrong

Supreme Court of Nebraska, Filed Nov. 18, 1975—George H. Turner, Clerk

No. 40471

STATE OF NEBRASKA
COUNTY OF DOUGLAS, SS.

KILEY ARMSTRONG, being first duly sworn deposes and says as follows:

1. That she is employed as a newswoman by the Associated Press in Omaha, Nebraska, a news gathering cooperative association serving newspaper and broadcasting members throughout the world.

2. That on Sunday morning, October 19, 1975, in the County Court of Lincoln County, Nebraska, she attended the arraignment of Erwin Charles Simants, defendant in the case of the State of Nebraska, Plaintiff, vs. Erwin Charles Simants, Defendant, with Judge Ronald A. Ruff presiding. That during the arraignment proceedings the County Attorney of Lincoln County, Nebraska, Milton Larson, asked that part of the arraignment proceedings be closed on the grounds that an open hearing could be prejudicial to the rights of the defendant as far as a fair trial. That she was required to leave the courtroom for a period of 5-10 minutes. That in her absence the arraignment proceeding continued but that she has no personal knowledge as to exactly what transpired.

3. That on Wednesday morning, October 22, 1975, said Kiley Armstrong attended the Preliminary Hearing of said Erwin Charles Simants in the above captioned case, that before being allowed to enter the courtroom she was searched, that at the inception of the Preliminary Hearing, Judge Ruff discussed the problems of fair trial vs. free press and stated that in his opinion they are generally equal but that in this case fair trial must take precedent above free press. Then the bailiff passed out copies of a

"gag" court order per the instruction of the Court. The Judge reviewed said order and advised the reporters present that they could not report any testimony given at the Preliminary Hearing. The Judge then reviewed the Bar-Press Guidelines and told the reporters that they were to be followed unless his order which had just been passed out conflicted and then his order was to control.

4. That at said Preliminary Hearing Dr. Miles Foster testified as to technical subjects, tests and investigations performed and results thereof, and his opinions and conclusions from same; that he testified that all of the six deceased victims had been shot in the head. Two of the victims had been shot twice in the head and the 4 others only once. That in his opinion the holes in the head were made by .22 or .25 caliber bullets. That the powder burns on 2 of the victims indicated that they were shot from $\frac{1}{2}$ to 2 inches away. That there were red speckles around 1 of the powder burns. That he found evidence of sexual assault on one of the victims, Florence Kellie, a 10-year old girl. That said Dr. Miles Foster further testified about the direction of the bullets, their passage through a portion or all of the heads of the victims, the finding of bullets and fragments and that all of the victims died of brain damage from being shot in the head.

5. That at said Preliminary Hearing, June Lindstrom, an ambulance driver, testified as to the place of the bodies in the home of the Kellies, that David Kellie, a male 32 years of age, was still alive, that bubbles were coming from his blood, that on the trip to the hospital, she continued to apply suction to the wound of David Kellie, that David Kellie died at the hospital, and that she knew the identity of the victims in that she had personally known them prior to the killings. That Kiley Armstrong further states that she knew all of the details testified to by June Lindstrom prior to her testimony at the Preliminary Hearing in that she had interviewed said June Lindstrom a few

days earlier and had learned all of the details as testified to in said interview. The Associated Press published said details prior to the Preliminary Hearing as testified to by June Lindstrom.

6. That at said Preliminary Hearing James Robert Boggs, a 13-year old nephew of Erwin Charles Simants testified that on Saturday night, October 18, 1975, defendant got a .22 caliber automatic rifle from the bedroom of James Robert Boggs' parents. That it was his impression that the defendant loaded said gun. That the defendant then told James Robert Boggs to keep the kids inside and don't tell anyone anything. That the defendant left the home for a period of approximately 10-15 minutes. That the defendant then returned to the home and set the rifle down in the kitchen. The defendant then sat down at a table and wrote something on a piece of paper. The defendant then went downstairs with the piece of paper. That the defendant then cleaned the rifle and put it back in the bedroom of his parents. That the defendant then told James Robert Boggs "I shot the Kellies. I did not want to shoot David and them, but he came in." Then the defendant told James Robert Boggs to call his grandma (Grace Simants), which he did. He then gave the phone to the defendant but did not hear the telephone conversation. James Robert Boggs then testified that the defendant left the home and told him not to tell anyone. That later, James Robert Boggs' parents found a written note downstairs on a fan. James Robert Boggs then testified as to what his parents told him was on the note and that he stated that it said "Don't cry. It was the only way."

7. That at said Preliminary Hearing, Amos Simants, father of the defendant, testified that his wife received a phone call from the defendant, that at about 9:00 P.M. the defendant came to their home, that the defendant told him "I beat the Kellies to death." That Amos Simants then testified that he did not believe the defendant so he went

to the Kellie's home to see for himself. That at the Kellie's home he saw two bodies on the floor and that there was blood on each of them, and that he then called for an ambulance. That Kiley Armstrong further states that she interviewed Mr. Lindstrom, husband of June Lindstrom, October 19, 1975, and that she was informed by Mr. Lindstrom that Amos Simants told Mr. Lindstrom that the night of the murder all of the details that Amos Simants testified to at the Preliminary Hearing and that the Associated Press published said details.

8. That at said Preliminary Hearing, Terry Livengood, Nebraska State Patrol Investigator, testified that he went to the Boggs' home and took possession of a .22 caliber automatic rifle and note reading "I am sorry. Do not cry. It was the only way."

9. That at said Preliminary Hearing Gordon D. Gilster, Lincoln County Sheriff, testified that he went to the Boggs' home, arrested the defendant at approximately 8:00 a.m. on Sunday morning, October 19, 1975, and took him into custody. He took the defendant to the jail and took a statement from the defendant. That he later took a second statement from the defendant and recorded it. Kiley Armstrong further states that about that time one of the defense attorneys for the defendant asked for a short recess so that he could examine the transcript of the "confession—I mean statement."

Further affiant sayeth not.

/s/ **KILEY ARMSTRONG**
Kiley Armstrong

Subscribed and sworn to before me this 31st day of October, 1975.

/s/ **JAMES L. KOLEY**
Notary Public

James L. Koley, General Notary State of Nebraska
My Commission Expires October 10, 1976

Supreme Court of Nebraska, Filed Nov. 18, 1975—George H. Turner, Clerk

IN THE SUPREME COURT OF NEBRASKA

No. 40471

THE STATE OF NEBRASKA, ex rel NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS; UNITED PRESS INTERNATIONAL; NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA CHI; KILEY ARMSTRONG; EDWARD C. NICHOLLS; JAMES HUTTENMAIER; WILLIAM EDDY; Relators,

vs.

THE HONORABLE HUGH STUART, Judge, District Court of Lincoln County, Nebraska, Respondent.

AFFIDAVIT OF STEPHEN T. MCGILL

STATE OF NEBRASKA
COUNTY OF DOUGLAS, ss

STEPHEN T. MCGILL, being first duly sworn, upon oath deposes and states:

That I appeared in the District Court of Lincoln County, Nebraska on the 27th day of October, 1975, as attorney for the media in the case of State vs. Simants; that, in conjunction with those proceedings, the Honorable Hugh Stuart, District Judge in and for Lincoln County, Nebraska, presiding in the Simants case, read in open court an order restraining pretrial publicity dated October 27, 1975; that present at that hearing was the defendant, Simants, counsel for the media, defense and prosecution, various members of the press and the public; that the order as read

in open court was subsequently typed and made a part of the court file in the Simants case.

FURTHER AFFIANT SAYETH NOT.

/s/ STEPHEN T. MCGILL
Stephen T. McGill

Subscribed and sworn to before me this 31st day of October, 1975.

/s/ LOUISE G. ANDERSEN
Notary Public

General Notary, State of Nebraska, Louise G. Andersen
My Commission Expires May 22, 1977

Exhibit A2

Filed Oct. 22, 1975—Ronald A. Ruff, County Judge

IN THE COUNTY COURT OF LINCOLN COUNTY, NEBRASKA

THE STATE OF NEBRASKA, Plaintiff

vs.

ERWIN CHARLES SIMANTS, Defendant

AMENDED COMPLAINT

(28-401)

STATE OF NEBRASKA,
COUNTY OF LINCOLN:

Milton R. Larson, County Attorney of Lincoln County, Nebraska, for and in the name of the State of Nebraska, complains before a County Judge of Lincoln County, Nebraska that

ERWIN CHARLES SIMANTS

Defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully

COUNT I

purposely and of deliberate and premeditated malice or in the perpetration of or attempt to perpetrate a sexual assault in the first degree, kill another, to wit: James Henry Kellie: and

COUNT II

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice or in the perpetration of or attempt to perpetrate

a sexual assault in the first degree, kill another, to wit:
Audrey Marie Kellie; and

COUNT III

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice or in the perpetration of or attempt to perpetrate a sexual assault in the first degree, kill another, to wit: David Leroy Kellie; and

COUNT IV

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice or in the perpetration of or attempt to perpetrate a sexual assault in the first degree, kill another, to wit: Daniel Leroy Kellie; and

COUNT V

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated malice or in the perpetration of or attempt to perpetrate a sexual assault in the first degree, kill another, to wit: Deanna Lynn Kellie; and

COUNT VI

Milton R. Larson being further duly sworn, complains that Erwin Charles Simants, defendant, on or about October 18, 1975, then in Lincoln County, Nebraska, did unlawfully, purposely and of deliberate and premeditated

malice or in the perpetration of or attempt to perpetrate a sexual assault in the first degree, kill another, to wit: Florence Marie Kellie;

contrary to the statutes of the State of Nebraska.

/s/ MILTON R. LARSON
County Attorney

SUBSCRIBED and sworn to before me on October 22, 1975.

/s/ RONALD A. RUFF
County Judge

[SEAL]

Exhibit D

Filed 11:33 A.M., Oct. 23, 1975—I. L. Boyle, Clerk District Court

**IN THE COUNTY COURT IN AND FOR LINCOLN COUNTY, NEBRASKA
DISTRICT COURT OF LINCOLN COUNTY, NEBRASKA**

Case B-2904

Doc. 71, No. 255

THE STATE OF NEBRASKA, Plaintiff

vs.

ERWIN CHARLES SIMANTS, Defendant

**APPLICATION OF NEBRASKA PRESS ASSOCIATION, OMAHA
WORLD-HERALD COMPANY, THE JOURNAL-STAR PRINTING
CO., WESTERN PUBLISHING CO., NORTH PLATTE
BROADCASTING CO., NEBRASKA BROADCASTERS ASSOCIA-
TION, ASSOCIATED PRESS AND UNITED PRESS INTER-
NATIONAL**

COME Now the Nebraska Press Association, an association representing in excess of two hundred (200) daily and weekly newspapers in the State of Nebraska; Omaha World-Herald Company, a Delaware corporation, the owner and publisher of the OMAHA WORLD-HERALD, a daily local newspaper printed and published in the City of Omaha, Douglas County, Nebraska; The Journal-Star Printing Co., a Nebraska corporation responsible for the publishing of the LINCOLN STAR and the LINCOLN JOURNAL, daily local newspapers printed and published in the City of Lincoln, Lancaster County, Nebraska; Western Publishing Co., a Nebraska corporation, owner and publisher of the NORTH PLATTE TELEGRAPH; North Platte Broadcasting Co., a Nebraska corporation, owner and operator of radio station KODY in Lincoln County, Nebraska; Nebraska Broadcasters Association, representing more than seventy (70)

radio and television stations in the State of Nebraska; and the Associated Press and United Press International, both of which are engaged in the dissemination of news to members locally, nationally and internationally, and respectfully show to the Court:

1. That the applicants herein are interested in these proceedings as members of the news media.
2. That the County Court of Lincoln County, Nebraska, has bound the defendant over to this Court, as shown by the transcript and records of the proceedings of that court and the filings herein, which by this reference are incorporated herein as if fully set forth verbatim.
3. That the County Attorney of Lincoln County, Nebraska, on behalf of the State of Nebraska, made a motion in the proceedings before the County Court with respect to pretrial publicity and the defense has joined in that motion.
4. That, in conjunction with the preliminary hearing before the County Court, the Hon. Ronald A. Ruff, County Judge, entered an order, copy of which is attached hereto as Exhibit "A" and which is, by this reference, made a part hereof.
5. That the order of the County Court is repugnant to and in violation of the following provisions of the Constitution of the United States and the Constitution and Statutes of the State of Nebraska:
 - (a) Amendments No. I, VI and XIV to the Constitution of the United States.
 - (b) Article I, Sections 5, 11 and 13 of the Constitution of the State of Nebraska.
 - (c) Sec. 24-311 R.R.S. 1943.

6. That the order of the County Judge is repugnant to and in violation of the general law of this State and this Nation in the following particulars:

(a) The third interest in a criminal proceeding is that of the general public in the operation of its legal institutions. Properly conducted preliminary hearings and trials, in addition to serving the interest of the accused and his connections and the interests of the victims and their connections, maintain the confidence of the community in the honesty of its institutions, in the competence of its public officers, in the impartiality of its judges, and in the capacity of its criminal laws to do justice. Public trial is and has been a basic tenet of our legal heritage. Equally basic to our system is the free interchange of information concerning our judicial system.

(b) The order of the County Judge, in effect, denies a public hearing by silencing all of those present; and the County Court's blanket gag rule is virtually unknown to our system of justice.

(c) The further order of the County Court precluding any party to this case, law enforcement official, public officer, attorney, witnesses or news media from disseminating any information concerning the above-described matter, apart from the preliminary hearing, is repugnant to a free society. It smacks of precensorship with the resulting evil of muzzling of a free press and it would even, apparently, prohibit the public and the press from the non-official investigative rights which have heretofore been assumed to be a part of our judicial system and a right of our society.

8. Notwithstanding that the jurisdiction of this matter is in this Court, since the Defendant has been bound over to this Court, the order of the County Court seems to say that it is to remain in effect until modified or rescinded by

a higher court or until the defendant is ordered released from the charges herein.

WHEREFORE, your Applicants respectfully request permission to appear in connection with the order of the County Court and to be heard thereon; and your Applicants further respectfully move the Court that this Court enter an order that the said order of the County Court of Lincoln County, Nebraska, be vacated and held for naught.

NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS AND UNITED PRESS INTERNATIONAL,

Applicants

By: /s/ STEPHEN T. MCGILL
 Stephen T. McGill
 for MCGILL, KOLEY & PARSONAGE, P.C.
 10050 Regency Circle, Omaha 68114
 Phone: 402-397-9988

and

By: /s/ HAROLD W. KAY
 Harold W. Kay
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Their Attorneys

Filed Oct. 27, 1975—I. L. Boyle, Clerk District Court

IN THE COUNTY COURT IN AND FOR LINCOLN COUNTY, NEBRASKA
DISTRICT COURT OF LINCOLN COUNTY, NEBRASKA

THE STATE OF NEBRASKA, *Plaintiff*

vs.

ERWIN CHARLES SIMANTS, *Defendant*

APPLICATION OF THE NEBRASKA PROFESSIONAL CHAPTER OF
THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA
CHI

Comes now the Nebraska Professional Chapter of the Society of Professional Journalists/Sigma Delta Chi, a professional organization of journalists, and respectfully moves this Court to permit it to join in any and all pleadings filed by the Nebraska Press Association, *et al*, who have previously made application to this Court.

THE NEBRASKA PROFESSIONAL CHAPTER OF THE
SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA
DELTA CHI,
Applicants

By: /s/ STEPHEN T. MCGILL
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Their Attorneys

SUPREME COURT OF NEBRASKA

No. 40445

STATE OF NEBRASKA, *Plaintiff*

vs.

ERWIN CHARLES SIMANTS, *Defendant*

EXCERPTS FROM TRANSCRIPT

Filed Nov. 6, 1975—I. L. Boyle, Clerk District Court
Supreme Court of Nebraska, Filed Nov. 13, 1975—George H. Turner, Clerk

IN THE DISTRICT COURT OF LINCOLN COUNTY, NEBRASKA

Case No. B-2904

THE STATE OF NEBRASKA, *Plaintiff*

vs.

ERWIN CHARLES SIMANTS, *Defendant*

Bill of Exceptions

Tried before the HONORABLE HUGH STUART, Judge of the Thirteenth Judicial District of the State of Nebraska, on the 23rd and 27th days of October, 1975, at North Platte, Lincoln County, Nebraska.

APPEARANCES

For the Plaintiff, Mr. Milton R. Larson and
Mr. Marvin L. Holscher

For the Defendant, Mr. Keith N. Bystrom and
Mr. Leonard P. Vyhalek

For the Interventors, Mr. Stephen T. McGill and
Mr. Harold W. Kay

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EXHIBITS					
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2.	Docket Sheet	17	38	39	39-B
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EXHIBITS

No.	Exhibit	Marked	Offered	Ruling	Found
4-E.	Newspaper Clipping Omaha World-Herald October 23, 1975	50	55	65	65-E
4-F.	Newspaper Clipping Lincoln Star October 21, 1975	50	55	65	65-F
4-G.	Newspaper Clipping Lincoln Star October 20, 1975	50	55	65	65-G
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CERTIFICATE

I, Robert B. Miller, Official Court Reporter of the Thirteenth Judicial District of the State of Nebraska, do hereby certify that the within and following Bill of Exceptions contains all evidence, stipulations and motions offered at the hearings on the Application of the News Media had in the above-entitled case and all rulings of the Court thereon.

The complete Bill of Exceptions is in one volume, consisting of 89 typewritten pages of proceedings and testimony and 17 exhibits contained herein.

I further certify that said Bill of Exceptions is correct and complete and is in accordance with the Praeclipe filed by the interveners herein; that the cost for the preparation of said Bill of Exceptions is in the amount of \$114.90, and that said sum is in compliance with Section 24-342 R.R.S. Neb. 1943, 1963 Cumm. Supp.; and that said charge includes a reasonable charge for preparation of exhibits for filing in this Bill of Exceptions.

/s/ ROBERT B. MILLER
Robert B. Miller

6 Thereupon, At this time, 6:10 o'clock p.m., Central Daylight Time, on the 23rd day of October, 1975, the defendant appearing in the custody of the sheriff, and all counsel appearing as hereinbefore set forth, the following proceedings were had before the Honorable Hugh Stuart, District Judge of the Thirteenth Judicial District of the State of Nebraska, in the District Courtroom, Third Floor, Lincoln County Courthouse, North Platte, Nebraska, to-wit:

The Court: The case to be considered at this time is State of Nebraska versus Erwin Charles Simants, Case No. B-2904.

Mr. Vyhalek: Your Honor, if it please the Court, the applicants here have filed what appears to be a pleading to intervene in the case of State of Nebraska versus Erwin Charles Simants. And in the application they are attempting to either modify or dissolve the order entered by the Lincoln County Court. We would at this time orally, and ask leave later to file, a written motion to the effect to move to strike the application of the applicants, and, in

support of that motion, show to the Court that the 7 applicants here, who, in their application, set forth they are various press associations, corporations and individuals who are engaged in the business of disseminating news information, have no standing to intervene in a criminal matter in which the State of Nebraska is the plaintiff and Erwin Charles Simants is the defendant.

In support of that motion we show to the Court that the processes for interventions in the State of Nebraska are all limited to civil actions under the provisions of Chapter 25, that the provisions of Chapter 25 have not been complied with in this attempt; that the application here has not been made in order to make the defendant a party; that the defendant here has and is now asking for all pre-trial hearings to be closed.

We would further move that the order which was entered by the Lincoln County Court on October 22nd, 1975, be continued until a complete hearing can be had on the question which is being raised by the application filed by the interveners. We would further show to the Court that at the time that the order was entered by the Lincoln

County Court, the original motion was filed by the
8 Lincoln County Attorney's Office, that the defense at that time consented to the motion to have at least the restricted hearings; and that in addition to that we moved on behalf of the defendant to completely close all pretrial hearings prior to actual trial.

This is the extent of the motion at the present time. If the Court desires argument we are prepared to argue.

The Court: My understanding is that your oral motion is to not consider the motion filed by the—

Mr. Vyhalek: The many-named applicants.

The Court: —many-named applicants, represented by Stephen McGill and Harold Kay.

Mr. Vyhalek: Yes, sir. In other words, to clarify, since it is oral, not to consider the application, number one, and, I suppose this is an alternative pleading, that the order of the County Court stand until a further hearing be had, and, number three, to renew our motion in this court to completely close all pretrial proceedings.

The Court: Very well. I will consider that motion,
9 your first motion, at this time, that one alone at this time, to-wit, the striking from the file of the application of the many news media represented by Mr. McGill and Mr. Kay. You may argue that motion.

(Thereupon, argument was made by Mr. Vyhalek, Mr. Larson, Mr. McGill and Mr. Kay. After which, the following further proceedings were had, to-wit:)

The Court: The Court is of the opinion that the case here involved does affect the people of the State of Nebraska, and although the official representatives of the peo-

ple of the State of Nebraska are the County Attorney and the Attorney General, as pointed out by the defendant, I do feel that the news media have a right to be in the case to a claimed infringement of their constitutional rights. And I refuse the defendant's motion to strike this application from the file.

Mr. Vyhalek: At this time, Your Honor, I would again renew my motion that the order of the County Court remain intact until such time as we can have a complete hearing, a complete evidentiary hearing on the question of asking the Court for an order to completely close all the pretrial hearings.

The Court: What do you contemplate in that connection, Mr. Vyhalek?

Mr. Vyhalek: You mean as far as the hearing is concerned?

The Court: Yes.

Mr. Vyhalek: I think, Your Honor, what I would suggest on behalf of the defendant that we have a hearing, since the Court has allowed the press to come in, at least according to the case that Mr. Kay has cited and some of these other things, there is an indication that the press does have the right to come in or could have the right to come in, that the matter of our asking for a closed or all closed hearings prior to the time of trial and their question as to whether or not the order of the County Court should be overturned because the order does provide that that order shall remain in effect until modified by the District Court, should be heard at the same time.

The Court: I understand what you tell me. I think I'm asking you more of a nuts and bolts question.

11 Mr. Vyhalek: On time?

The Court: I'm talking about time as to when you will be ready for such a hearing and how long you would anticipate that such a hearing would take?

Mr. Vyhalek: Well, first of all, Your Honor, with regard to our question now, let me say this, that with regard

to this particular application which has now been allowed by the Court there is an allegation here, at least in the opening parts of their application, that there are some 200 newspapers, 70 radio stations, and now apparently another applicant who is Sigma Delta Chi, who want to intervene, I think. Your Honor, the first thing that's going to be forthcoming on it is the news media to produce all the documentation with regard to the articles that have been run so far. We have apparently the burden of going forth with some proof on this. So, I would anticipate the first part of November.

The Court: I will grant your motion for a hearing. But, I think that we have got to recognize that this case has impact on all of the people of the State of Nebraska,
 12 and that the lack of information with regard to the case can breed distrust for the Courts, and the delay of such a hearing would defeat the very purpose of the motion by the possible growing distrust of the courts because of the lack of information that the people represented by Mr. McGill and Mr. Kay claim.

I do presume to have an immediate hearing on the motion. I would be willing to go forward with an evidentiary hearing right now. If you need some time to prepare I would suggest preparing for such and going forward yet this evening. The reason that I suggest yet this evening is that I do have appointments in Lexington that I must keep tomorrow, and I have appointments of a personal nature on Saturday that I feel I must keep. Being more specific, my only daughter is getting married that day and it is a matter of considerable importance to me.

13 If you need time to prepare, I would give you some time now; but, I would presume to go ahead with this hearing yet this evening. If you are ready to go ahead with the hearing now, I'll listen to you.

Mr. Vyhalek: The defendant certainly is not prepared for the magnitude of the motion that has been presented here by the interveners on the grounds that we now have

an entire group of individuals in here that we didn't originally anticipate when the original order was entered. And, Your Honor, the uniqueness of it is that we apparently under this, at least even the case that Mr. Kay cited, are entitled or at least must go ahead with the burden of why we want a closed hearing. Now, we are not prepared for that certainly because we don't have either the clippings or the recordings of everything that was run on this matter. If the Court would indulge us, if the interveners would be willing to comply with a motion to produce at this point or within the next two or three days, we certainly would be willing to go ahead with the motion.

I would also point out, Your Honor, that the application of the interveners themselves ask that a
 14 hearing be set at a later date, or whatever it is, a later time, a hearing be set.

The Court: They request permission to appear and be heard.

Mr. McGill: We want it clearly understood, Your Honor, that it is the position of our clients that they consider delay a denial of their constitutional rights and would like to have a hearing conducted as soon as it's possible for the Court to do so. And I'm trying—what I don't really understand that last remark of counsel—

Mr. Vyhalek: Well, I may have—I think that's in here. I was reading the other motion that was filed to be heard.

Mr. Kay: There was only one application.

Mr. Vyhalek: Okay. You mean just one, Harold?

Mr. Kay: That we filed.

Mr. Vyhalek: Okay.

Mr. Kay: We're asking for a hearing post-haste.

The Court: I certainly don't want to drag this thing out beyond reason, but I do think that the defendant is confronted with a new problem here. I did not note the time of the beginning of this hearing, but I think it was
 15 approximately 6 p.m. It is now 6:40. I will adjourn this hearing at this time and we will take up the

hearing at 8 p.m. I would presume at that time to go forward with the evidentiary hearing. Court is adjourned.

(Thereupon, Court was adjourned until 8 o'clock p.m., at which time, all counsel and the defendant being present, the following further proceedings were had, to-wit:)

The Court: At this time we will proceed to hear the evidentiary presentation on the motion filed by the people denominated first as the Nebraska Press Association. Do you desire an opening statement, Mr. Kay?

Mr. Kay: No. We will waive opening statement, Your Honor.

The Court: Mr. Larson, do you desire an opening statement with reference to this motion?

Mr. Larson: No, Your Honor.

The Court: Mr. Vyhalek, Mr. Bystrom?

Mr. Bystrom: No, Your Honor, we have no opening statement.

16 The Court: Very well. Mr. Kay, call your first witness.

Mr. Kay: Judge Kriz, would you take the stand, please?

Mrs. Dorothy Kriz

Called as a witness on behalf of the Interveners, after having first been duly sworn by the Court to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

By Mr. Kay:

Q. Would you state your name, please? A. Dorothy Kriz.

Q. And where do you live, Mrs. Kriz? A. In North Platte.

Q. And what is your occupation? A. I am the Associate Judge, Clerk of the Lincoln County Court.

Q. That's here in North Platte? A. Yes.

Q. And how long have you had that position? A. About a year and a half.

Q. As Associate County Judge what are your duties? A. Well, I mainly see to the administrative part of the operation of the Lincoln County Court.

Q. Would this include preparing orders and journals? A. Yes.

Q. And keeping custody of the court files and records? A. Yes.

Q. And preparing docket notes for the court? A. I don't directly, but I have a court reporter that does.

Q. And are those prepared under your supervision? A. Yes.

Q. And who is the District Court County Judge of Lincoln County at this time? A. Judge Ronald Ruff.

Q. And how long has he had that position? A. About two, a little over two and a half years.

Q. Now, are you familiar with the case of State versus Erwin Charles Simants? A. Yes.

Mr. Kay: May I approach the witness, Your Honor.

The Court: You may.

(Thereupon, Exhibits Nos. 1, 2 and 3 were marked for identification by the Reporter.)

18 Q. (By Mr. Kay) Now, Judge Kriz, I am handing you what has been identified by the Court Reporter as Exhibit No. 1, and I ask you what that is? A. This is our, the court file on the case of State of Nebraska versus Simants.

Q. And what is the number of that case in the Lincoln County Court? A. Docket 75, Page 789.

Q. Is that file under your custody and control? A. Yes.

Q. I am handing you what has been identified as Exhibit No. 2, and I ask you what that is? A. This is the docket sheet of the same case.

Q. Are you familiar with that docket sheet? A. Yes.

Q. And have you looked at it before? A. Yes, I have.

Q. Have you prepared any journals entries or orders from those notes? A. No, I haven't, not from these notes.

Q. Well, have you used them to assist yourself in preparing orders, such as the order that was recently entered in connection with the so-called "gag order"? A. Only for the heading.

Q. Yes. Now, I hand you Exhibit No. 3, and I
19 ask you what that is? A. That is a claim to Lincoln
County for the witness fees.

Q. Now, do Exhibits 2 and 3, were they included as part of the court file which has been identified as Exhibit No. 1? A. No, they won't be.

Q. Now, referring to Exhibit No. 1, there is a pleading in Exhibit No. 1 which is entitled "Motion For Restrictive Order." Would you please tell the Court when that motion was filed, on what date and what time?

Mr. Vyhalek: Objected to as being incompetent, irrelevant, immaterial, and without the scope of the inquiry in these proceedings.

The Court: Overruled.

A. It was filed on the 21st day of October, approximately 7 o'clock p.m.

Q. (By Mr. Kay) Now, what are the hours of the Lincoln County Court? A. The hours of the Lincoln County Court are from 8 a.m. to 5 p.m.

Q. So, it was filed after the court was closed, was that correct? A. Yes.

Q. And were you present when it was filed?
20 A. Yes.

Q. Now, on or about October 21 did you have occasion to contact certain local news media? A. Yes, I did.

Q. And could you please tell the Court who told you to contact the local media? Or who directed you to do so? A. Judge Ruff.

Mr. Kay: May I go back to the counsel table?

The Court: Yes.

Q. (By Mr. Kay) And when did he tell you to contact the local media?

Mr. Vyhalek: I object to that, Your Honor, on the grounds that it's hearsay, immaterial, irrelevant, incompetent; completely without the scope of the issue in this area. Counsel is referring to individuals who at this time are not a party to this action and were not a party to the action in the Lincoln County Court.

The Court: Overruled. She may answer when this happened. She may not repeat the exact verbatim remarks as being hearsay. The question, Judge, was "When." A. About 4:30.

21 Q. (By Mr. Kay) On what date? A. On the 21st.

Q. And this was prior to the time that the motion which you just testified about was ever filed, was this correct? A. Yes.

Q. And whom did you contact? A. I called Mr. Huttmaier of KODY.

Q. Now, this would be KODY, which is an affiliate with the North Platte Broadcasting Company? A. Yes, a radio station.

Q. And they're an applicant in this action, are they not? A. Yes, I believe so.

Q. And whom else did you contact? A. I called Dan Meyers of KAHL Radio Station, and I called Mr. Don Feldman of KNOP TV.

Q. Anybody else? A. The newspaper was contacted by Judge Ruff for the reason that he had discussed this in his office and he was going to call the news media and he decided to call the newspaper because he thought they maybe would not have anyone there after 5 o'clock and we wouldn't know who to contact after 5. And after he called the newspaper it was more or less my suggestion

22 that I then contact the other news media.

Q. You were contacting the local news media which you referred to on behalf of Judge Ruff and at his request, as I understand it. A. Yes.

Q. And did you contact all three media at or about the same time? A. Yes.

Q. And about what time was that? A. It was about 4:30.

Q. On the 21st of October, 1975? A. Yes.

Q. And would you tell, first of all, who did you contact at KODY? A. I talked to Mr. Huttenmaier.

Q. And what did you tell Mr. Huttenmaier at that time? A. I told him that Judge Ruff had thought he may have some news that may be of some importance to the news, and that he would like to have him come about 7:30 and that we, I would be downstairs at the south door to let him in.

Q. And what did you tell the gentleman at Radio Station KAHL? A. Approximately the same thing.

23 Mr. Vyhalek: Your Honor, I still want to object for the record on this matter, that is totally and completely irrelevant to the inquiry in this case. The news media has had their petition in intervention allowed by this Court at this point, and all this matter surrounding the Lincoln County Court's apparent notification is totally irrelevant.

The Court: Overruled.

(Thereupon, the last question and answer were read by the Reporter.)

Q. (By Mr. Kay) And the gentleman at the local television station? A. The same thing too.

Q. Did you tell any of these people that you called that a motion had been filed to restrict the coverage, the media coverage in this case? A. No.

Mr. Vyhalek: I object and move to strike that on the grounds that it's irrelevant.

The Court: Overruled.

Q. (By Mr. Kay) Did you advise any of the members of the media who you called that there was going to be a hearing on any motion at 7:30 p.m. in the Lincoln County

24 Court on October 21, 1975, concerning such a motion? A. No.

Mr. Vyhalek: Same objection.

The Court: Overruled.

Q. (By Mr. Kay) Now, did you leave the court that day and go home in the evening or did you stay at the court? A. No, I—

Mr. Vyhalek: I object to that. I object to all this line of questions on the grounds that it's totally irrelevant.

The Court: I fail to see the relevancy, Mr. Kay.

Mr. Kay: I'm laying the foundation that she was there at 7:30.

The Court: The objection is sustained.

Q. (By Mr. Kay) Okay. Were you there at 7:30, at the Lincoln County Court at 7:30 p.m. on October 21, 1975? A. Yes, I was.

Q. And when did you arrive at the court? A. I was in the court about 6:15.

Q. Now, did you, yourself, have occasion to come out of the court into the lobby? A. Yes, I did.

25 Q. And about what time was that?

Mr. Vyhalek: I object, Your Honor. This is all irrelevant.

The Court: Sustained.

A. I—

The Court: Sustained. You don't have to answer.

Q. (By Mr. Kay) Did you have any occasion to contact the news media at anytime there in front of the Lincoln County Court prior to 7:30 p.m. on October 21, 1975?

Mr. Vyhalek: To which we object as irrelevant.

The Court: I'm not sure where you're going with this, Mr. Kay.

Mr. Kay: I would like to show that the witness had a conversation with some members of the news media at that time and place as an official of the court.

The Court: Very well. The objection is overruled pending upon further showing of relevancy.

A. Yes, I did.

Q. (By Mr. Kay) Now, at that particular time was there any hearing going on in the Lincoln County Court, or was anybody occupying the Lincoln County Court?

26 A. Yes.

Q. And who was in the courtroom at that time, if you know?

Mr. Vyhalek: We object to this as being totally, absolutely and completely immaterial, and there is no foundation laid, and it's not a proper foundational question.

The Court: Overruled.

Mr. Kay: You may answer.

(Thereupon, the last-pending question was read by the Reporter, to-wit: "Question: And who was in the courtroom at that time, if you know?")

A. I was trying to recall—I believe Mr. Larson was there.

Q. (By Mr. Kay) The county attorney? A. Yes; and Mr. Vyhalek was there.

Q. The deputy or assistant public defender? A. Uh-huh. And Judge Ruff, Judge Byrnes, Judge Myers—I don't recall if Mr. Bystrom was there at all.

Q. Now, when you came out and talked to the media there was this while they were all in the courtroom? A. Yes.

Q. And what did you tell the media at that time?

27 Mr. Vyhalek: I object to that as being irrelevant.

The Court: Overruled.

A. I just went out and asked the gentlemen to please go to the first floor and when we were ready for them I would come down and get them.

Q. (By Mr. Kay) And then what did you do then, later? A. I went back into the courtroom.

Q. And then did you later go down and talk to the news media? A. No. I believe Judge Byrnes went.

Q. And then were you in the court at 7:30? A. Yes.

Q. And who was there at that time? A. The gentlemen that I mentioned before, and—

Q. Did you ever leave the courtroom at anytime during the time that you went out and told the media to go downstairs and then you came back up? A. Yes. Before the hearing, yes.

Q. What time did the hearing commence? A. Shortly after 7:30.

Q. And would you tell the Court, please, who was in the courtroom at that time, at the time of the commencement of the hearing? A. Well, the gentlemen that I men-

28 tioned before, plus the Deputy County Attorney, Mr. Holscher, and the defendant, and the sheriff, and the news, various members of the news media, and you were present.

Q. Yes. And was there a hearing held at that time? A. Yes.

Q. And was a record made of that hearing? A. Yes.

Q. And was there a statement made by the County Attorney, Mr. Larson? A. Yes.

Q. A statement made by Mr. Vyhalek? A. Yes.

Q. And was there a statement made by myself? A. Yes, there was.

Q. Was anyone called to testify? A. No.

Mr. Vyhalek: I object to that, Your Honor. The record of the court speaks for itself. And I move to strike the answer.

The Court: Overruled.

Q. (By Mr. Kay) Were exhibits offered in evidence?

Mr. Vyhalek: Objection, same objection.

The Court: Overruled.

A. No.

Q. (By Mr. Kay) Was any evidence adduced at 29 this so-called hearing on the motion?

Mr. Vyhalek: We object. The record of the court speaks for itself. There is testimony in the record already which indicates that a record was made.

The Court: Overruled.

A. No.

Q. (By Mr. Kay) Now, there was an order entered, as I understand, following the so-called hearing. A. Yes.

Mr. Vyhalek: I object to that, referring to that as a "so-called hearing" and move to strike it. This thing is getting bad enough without stuff like that in here.

The Court: The objection is sustained, and the reference to the "so-called hearing" is stricken.

Q. (By Mr. Kay) Was there any evidence given at the hearing which would indicate that there was any testimony which might be given at the preliminary hearing which would be prejudicial to the defendant?

Mr. Vyhalek: I object to that as being totally immaterial, incompetent, irrelevant; further show that while this witness has testified that she is an Associate 30 Judge of the County Court she was not sitting, and the question of whether or not there was evidence introduced at that trial is one which, I've always been under the impression, the Judge decides.

The Court: It seems to me that you're calling for a conclusion of the witness. The objection is sustained.

Q. (By Mr. Kay) Well, I'll come back to it this way: As I understand it, there was absolutely no evidence introduced in any manner, shape or form.

Mr. Vyhalek: Same objection.

The Court: Overruled.

Q. (By Mr. Kay) Is that a correct statement? A. I believe there was a motion that Judge Ruff—

Q. But, I'm talking about evidence. A. No.

Q. Is that a correct statement that I made?

Mr. Vyhalek: I object to that, as putting counsel's statement into evidence in this hearing.

The Court: Sustained.

Q. (By Mr. Kay) Your answer was "No" I think, just so we have an understanding here! This is all I want. As I understand it, there was absolutely no evidence.

Mr. Vyhalek: Asked and answered, Your Honor, 31 at least three times.

The Court: Sustained.

Mr. Kay: Is the Court taking the position that the question has been answered?

The Court: Yes.

Mr. Kay: Fine.

Q. (By Mr. Kay) Now, did you, yourself, prepare an order in connection with this hearing?

Mr. Vyhalek: I object to that.

The Court: Overruled.

Mr. Kay: May I approach the—

The Court: You may go ahead and answer it.

A. I typed an order.

Q. (By Mr. Kay) And when did you type that order, Judge? A. On the 21st, the evening of the 21st.

Q. And would you tell us when you started typing the order? A. I believe it must have been about a quarter of 9—wait a minute—quarter of 10, I beg your pardon.

Q. And what time did you complete typing the order?

A. About 10:30.

32 Q. Now, was there anything in this order which would indicate that I was there at the hearing?

Mr. Vyhalek: Objected to as being totally immaterial, irrelevant.

The Court: The objection is sustained on the grounds of best evidence.

Mr. Vyhalek: Okay.

Q. (By Mr. Kay) Was I at the hearing? A. Yes, you were.

Q. Now, will you examine the order, I'm referring to the order of the Court in Exhibit 1, would you identify that for the Court by placing a "D" above the word "Order"?

Mr. Vyhalek: I object to marking-up the court record of the Lincoln County Court, Your Honor. This is a matter which is going to be pending in the Lincoln County District Court, and that may become evidence in the case in which

Mr. Simants is charged. And I object to having anything placed on that record other than what appeared during the time of the proceedings in the County Court.

The Court: I do not feel that we should mark the records of the Lincoln County Court. The objection is
33 sustained.

Mr. Kay: I wanted to identify the order for the record.

The Court: I do not feel that we should take that liberty with the records of the County Court.

Mr. Kay: I want to identify the order some way to the Court so this Court will know what order we're talking about. If the witness would show it to the Court at this time?

The Court: I'm sure I'll be able to find it. Yes, I see it.

Q. (By Mr. Kay) And when did you file that order? A. On the morning of the 22nd.

Q. Can you tell us when the order was signed?—

Mr. Vyhalek: I object—

Q. (By Mr. Kay) —by the Court?

Mr. Vyhalek: —incompetent, irrelevant, immaterial. The record speaks for itself.

The Court: Overruled.

A. I can't tell you when it was signed because I didn't see when it was signed.

Q. (By Mr. Kay) I see. Now, I noticed under this order, under the judge's signature, there is the date "October 22, 1975." Does that mean anything to you in your position?

34 Mr. Vyhalek: Objected to as immaterial.

The Court: Overruled. I don't think the witness understands your question, Mr. Kay.

Mr. Kay: May I approach the witness?

The Court: You may.

Q. (By Mr. Kay) I am handing you what has been identified as Exhibit No. 1, and I'm referring to the order of the Court which you typed. A. Uh-huh.

Q. Which you say was filed on October 22, 1975. Now, referring to the third page thereof, under Judge Ruff's signature there is a date, "October 22, 1975." And I will ask you if that has any significance as far as you are concerned? A. Yes. I believe that would indicate that this is the day that he signed the order.

Q. Now, as the record keeper of the court, as Associate County Judge, you are aware of the fact that there was a preliminary hearing held in this case on the 22nd of October, 1975, are you not? A. Yes.

Q. And you are aware of the fact that the defendant was bound-over to the Lincoln County District Court on that date.

35 Mr. Vyhalek: To which we object on the grounds that this matter is still pending, that time for filing of motions by the defendant is not passed, and that for this witness to be allowed to give that conclusion is irrelevant and highly prejudicial to this defendant.

The Court: Sustained on the ground of best evidence.

Mr. Kay: Approach the witness?

The Court: You may.

Q. (By Mr. Kay) I'm referring to Exhibit No. 2. Would you state what that is? A. That is a docket sheet.

Q. And would you examine the docket sheet on both sides? — And that docket sheet was prepared under your supervision and direction?

Mr. Vyhalek: I object.

The Court: Overruled.

A. Yes.

Q. (By Mr. Kay) And would you please read the docket note on October 22, 1975?

Mr. Vyhalek: I haven't had the opportunity to examine that exhibit. May I before I make an objection, Your Honor?

The Court: You may.

36 (Thereupon, Mr. Vyhalek was handed Exhibit No. 2.)

Mr. Vyhalek: Now, Your Honor, with regard to the exhibit which the witness has testified to, Exhibit No. 2, we object first of all on the grounds that the exhibit speaks for itself; further, that this particular exhibit contains matters involving the proceedings in the County Court of Lincoln County, Nebraska, with regard to motions filed prior to the time of the preliminary hearing held in this matter, and also the account as per the Judge of the proceedings in the preliminary hearing. This matter, the transcript of this has not been up to the Lincoln County District Court as yet, and to allow this matter into evidence is absolutely and completely and totally prejudicial to this defendant, immaterial, irrelevant and incompetent.

The Court: I'm not sure that I understood the last question asked of the witness. You said to read a certain entry there. Do you mean to herself or aloud?

Mr. Kay: What was that, Your Honor?

37 The Court: Did you mean to read it to herself or aloud?

Mr. Kay: I wanted her to read it to herself and I would ask her—

The Court: She may read the item.

Mr. Kay: May I approach the witness?

The Court: Yes. Not aloud, simply to yourself.

(Thereupon, the witness read Exhibit No. 2.)

Q. (By Mr. Kay) Have you read the entry on October 22, 1975? A. Yes.

Q. Have you had a chance to examine Exhibit No. 2? A. No.

Q. Well, would you do so? —. Have you done so? A. Uh-huh.

Q. Is that a true and correct copy of the docket sheet entry in connection with—I don't believe the case number is on here—it says Page 789. A. We don't have a case number; just the docket.

Q. In the case of State versus Erwin Charles Simants,— A. Yes.

Q. Is that a true and correct copy of the notes? A. Yes.

38 Q. And those notes are under your care and supervision— A. Uh-huh.

Q. —and custody and control? A. Uh-huh.

Q. Okay. The same goes for Exhibits 1 and 3? A. Yes.

Mr. Kay: We will offer Exhibits 1, 2 and 3.

Mr. Vyhalek: May I examine those exhibits, please?

The Court: You may.

(Thereupon, Exhibits Nos. 1, 2 and 3 were handed to Mr. Vyhalek.)

Mr. Vyhalek: Your Honor, with regard to Exhibits 1, 2 and 3 we object on behalf of the defendant in that this appears to be the entire proceedings, at least as far as the transcript is concerned, in the Lincoln County Court in the matter of State of Nebraska versus Erwin Charles Simants; that this matter and the transcript has not as yet been lodged with the District Court; that the time of filing of motions and other preliminary pretrial matters by the defendant has not passed; that the admission of these

exhibits at this time is without the formal proceeding of the criminal trial in this matter. It is therefore unduly prejudicial, irrelevant, incompetent, immaterial; and, further, that docket sheet has many entries on it with regard to the proceedings in this matter, all of which are subject of motions in this court.

Mr. Kay: Your Honor, may I—if it would be all right, would the Court, we would request that we make photocopies of those exhibits and return the originals to the County Court. We certainly don't want to interfere in any way with their records.

The Court: Yes. We must return them to the County Court. The objection is overruled. Exhibits Nos. 1, 2 and 3 are admitted in evidence for the purposes of this hearing only, and leave is given to substitute copies.

Mr. Kay: I think I just have one more question or two.
... ...

Q. (By Mr. Kay) Do you remember when you came out and talked to the media and asked them to go down to the first floor, do you recall if I was there at that time? A. Yes, I believe you were.

40 Q. And did you ever tell me that these other people were in the courtroom? A. No.

Q. Was there any other hearing on that order that was entered on October 22, 1975?

Mr. Vyhalek: Objected to as being without the scope of the knowledge of this witness; irrelevant, incompetent, immaterial. The court records speak for themselves.

The Court: Would you read the question again?

(Thereupon, the last-pending question was read by the Reporter, to-wit: "Question: Was there any other hearing on that order that was entered on October 22, 1975?")

The Court: Overruled.

Q. (By Mr. Kay) In court or in chambers? A. On October 22? What date?

Q. I'm referring to the order that was entered on October 22, 1975. A. No.

Mr. Kay: That's all.

The Court: Mr. Vyhalek, you may inquire.

Mr. Vyhalek: I have no questions.

41 The Court: Mr. Larson, you may inquire.

Cross Examination

By Mr. Larson:

Q. Mrs. Kriz, what instructions did you receive from Judge Ruff relative to requesting that the news media retire to the first floor?

Mr. Vyhalek: That's asking for a hearsay answer, Your Honor, object.

The Court: Sustained.

Q. (By Mr. Larson) Were you instructed at any time to exclude Mr. Kay from the courtroom? A. No.

Mr. Larson: No further questions.

Re-Direct Examination

By Mr. Kay:

Q. Did you know that I represented the news media at the time that you came there and told them, all of us to go downstairs? A. No, I did not.

Mr. Kay: That's all.

Re-Cross Examination

By Mr. Vyhalek:

42 Q. Mrs. Kriz, did Mr. Kay ever make it known to you prior to 7:30 on the 21st of October that he did represent the news media? A. I have a vague, that he vaguely did when they came back upstairs after Judge Byrnes had gone down, that he did come in the room, in the court—not in the courtroom—but in the office and say something about, that he represented them. But I really don't recall.

Q. And that would have been at about 7:30 when Judge Byrnes went downstairs, is that right? A. Yes.

Mr. Vyhalek: I have nothing further. Thank you, Mrs. Kriz.

The Court: Mr. Larson, do you have further questions?

Mr. Larson: That's all, Your Honor.

The Court: You may step down.

Mr. Kay: May the witness be excused, if she'd like to be excused?

The Court: Do you have any objection, Mr. Vyhalek?

Mr. Vyhalek: I have no objection, Your Honor. However, in the event that it is necessary to recall her I'm sure that she would be available.

43 The Court: Mr. Larson?

Mr. Larson: No objection, Your Honor.

The Court: You may be excused, Judge Kriz, if you desire. Of course, you're welcome to stay.

Mr. Kay: Now, Your Honor, may we approach the bench?

The Court: Yes.

(Thereupon, a conference at the bench between Court and counsel was had out of the hearing of the Reporter. After which, the following further proceedings were had, to-wit:)

The Court: Do you desire to introduce evidence, Mr. Vyhalek?

Mr. Vyhalek: Your Honor, with regard to the motion to intervene, which I take it this was the evidence which we were operating on, or I think they were operating on, we have no evidence to present on that. Are we now going to consider the other phases of that motion that I made?

The Court: No, I'm only taking up the one motion at this time, taking evidence on this motion that was filed by the Nebraska Press Association and others.

44 Mr. Vyhalek: Then, do I understand from the Court that we would have a later time to come in with our evidence with regard to any clear and present dangers?

The Court: Yes, you will have.

Mr. Vyhalek: Thank you, Judge.

The Court: Mr. Larson, do you have evidence on this motion?

Mr. Larson: No, Your Honor.

The Court: Very well. This motion is necessarily coupled with other motions, and before I hear arguments on the motion I will listen to evidence on other motions that have been filed. You filed or made a three-pronged oral motion, Mr. Vyhalek. I would like to hear the evidence on your motions now, either separately or in conjunction with each other.

Mr. Vyhalek: Okay. I think it will be in conjunction with each other. The other one was to continue the order

until the Court makes its determination, and, secondly, a motion to close the pretrial proceedings completely.

The Court: Yes.

45 Mr. Vyhalek: And, in that respect, we will call Judge Ronald Ruff.

The Court: Just a minute, Judge Ruff.

Before you call him, do you want to make opening statements on this?

Mr. Vyhalek: No, Your Honor.

The Court: Mr. Larson, do you?

Mr. Larson: No, Your Honor.

The Court: Mr. Kay, do you?

Mr. Kay: No.

The Court: Would you come up and be sworn, Judge Ruff.

Mr. McGill: Your Honor, could we have a clarification, exactly what motion are we talking about?

The Court: There are two oral motions that Mr. Vyhalek made. One was to close all of the pretrial hearings; and, the second motion was to continue the County Court's order for restriction of reporting. And I was presuming to take evidence on both of these oral motions at this time.

Hon. Ronald A. Ruff

Called as a witness on behalf of the Defendant, after having first been duly sworn by the Court to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

By Mr. Vyhalek:

Q. Would you state your name, please? A. Ronald Ruff.

Q. Your address? A. 921 Union, North Platte, Nebraska.

Q. What is your occupation? A. Lincoln County Judge.
 Q. And were you Lincoln County Judge on October 21 and 22 of 1975? A. I was.

Q. And you are a County Judge at the present time, is that right? A. That's correct.

Q. On October 21, 1975, did you enter any orders in the matter of the case pending in the Lincoln County Court, State of Nebraska versus Erwin Charles Simants? A. On the 21st?

47 Q. Yes, sir—I'm sorry—Strike that. The 22nd.

A. The order was officially signed on the 22nd day of October, 1975.

Q. Did you enter an oral order on the night of October 21st? A. I did.

Q. And does the written order that you have before you essentially outline or does that constitute the order?

Mr. Kay: We will object to the question on the basis that the order speaks for itself, the best evidence.

Mr. Vyhalek: Well, I'm referring to the order.

Mr. Kay: It speaks for itself.

Mr. Vyhalek: That's all I'm asking, is if that is the order.

The Court: The objection is overruled. A. Would you repeat the question please?

(Thereupon, the last-pending question was read by the Reporter, to-wit: "Question: And does the written order that you have before you essentially outline or does that constitute the order?"

A. Yes.

48 Q. (By Mr. Vyhalek) That is the order? A. Yes.

Q. All right. In connection with signing that order did you consider the matters which were made subject of that order?

Mr. Kay: We will object to the question as calling for a conclusion of the witness; no proper foundation.

The Court: The objection is sustained.

Q. (By Mr. Vyhalek) Judge Ruff, how long have you lived in the North Platte community? A. Presently I have lived here since July of 1972; prior to that I was gone for 13 years; prior to that I lived here all my life except for the first three years. Whatever that adds up to; I'd have to—

Q. During the days of October 19th through 22nd were you familiar with the types of news information being disseminated in Lincoln County, Nebraska, with regard to the matter pending in your court entitled State of Nebraska versus Erwin Charles Simants?

Mr. Kay: To which we object as incompetent, irrelevant, immaterial.

The Court: Overruled.

A. Yes.

Mr. Vyhalek: Could we make all these one exhibit, Judge? There's a whole batch of stuff.

49 The Court: I think that would be all right to mark it—

Mr. Kay: Your Honor, in order to save time we will stipulate with counsel that we have a newspaper here in North Platte by the name of the North Platte Telegraph.

Mr. Vyhalek: I'm not interested in that, Your Honor. I want all those things into evidence.

Mr. Kay: May I finish my statement?

The Court: Go ahead.

Mr. Kay: We will stipulate that there is a newspaper in North Platte called the North Platte Telegraph, and that Mr. Vyhalek is having identified, I assume, a number of issues of the North Platte Telegraph, and will waive any foundation and stipulate and agree that they can be offered into evidence.

The Court: Very well. Proceed to mark them, Mr. Miller. Just hold it up until he gets them marked, please.

Mr. Kay: The reason I want to make this statement, I thought that these were all North Platte Telegraph papers, and they are not.

The Court: Well, let's wait until he gets them marked.

50 (Thereupon, Exhibits Nos. 4-A through 4-N were marked for identification by the Reporter.)

Mr. Vyhalek: Prior to asking for a stipulation, if that would be in order from interveners' counsel, we would show to the Court that with regard to Exhibit 4-A through N these matters will be submitted to Judge Ruff for his examination, as to whether or not he was aware as to the publicity afforded this particular matter and as to whether or not these items are representative of that publicity, together with whatever knowledge he had of radio and news coverage and television and newspaper coverage in this particular matter, and that he was aware of such on the 21st day of October, 1975.

And, I would further submit that that would be relevant in that this was the judge that had the jurisdiction of the case at that time and he has a sua sponte duty to do something.

Mr. Kay: May I make a statement as to what I will do?
The Court: Certainly.

Mr. Kay: We will stipulate that Exhibit 4-A is the October 23rd, 1975, issue of the North Platte Telegraph; 51 4-B is an October 20 issue of the North Platte Telegraph; that Exhibit 4-C is a news article from the November 21st, 1975 issue of the North Platte Telegraph—excuse me—October 21st, 1975, issue of the North Platte Telegraph; that Exhibit 4-D purports to be I think an article from the October 21st issue of the North Platte Telegraph pertaining to the Kellie family funeral; Exhibit 4-E purports to be an article from the Omaha World-Herald, October 23rd issue; that Exhibit 4-F purports to be an article from the October 21st issue of the Lincoln Star; that Exhibit 4-G purports to be an article from the October 20, 1975, issue of the Lincoln Star; that Exhibit 4-H is an article from the North Platte Telegraph issue of Octo-

ber 22, 1975; Exhibit 4-I is an article from the Omaha World-Herald, I believe the date is October 21, 1975; that Exhibit 4-J is an article from the October 21st issue of the Omaha World-Herald; that Exhibit 4-K is the October 20th, 1975 Morning Edition of the Kansas City Star; that Exhibit 4-L is the October 20 issue of the Omaha World-Herald; that Exhibit 4-M is the October 21st issue of the Denver Post; and that Exhibit 4-N is another issue of the North Platte Telegraph dated October 20, 1975.

52 The Court: Do you so stipulate, Mr. Vyhalek?

Mr. Vyhalek: You have all of them there, I take it. Yes, we so stipulate.

The Court: Do you agree to that, Mr. Larson?

Mr. Larson: Yes, Your Honor, so stipulated.

The Court: It will be so shown.

Mr. Vyhalek: Do you further stipulate to their admission?

Mr. Kay: No, I don't. I will stipulate with you that certain items there can be admitted for the sole purpose, and I would want to specify which ones there are—I mean, I have no argument—

Mr. Vyhalek: My only purpose, as I advised you, Mr. Kay, is when I offered them was that we would show the amount of publicity that this particular matter received, and that it was a local, state, regional and national scope.

Mr. Kay: I think that our remarks should be made to the Court rather than between counsel.

The Court: That is true.

Mr. Vyhalek: That is true. I apologize to the Court on that.

53 The Court: All right. Would you return them then to Mr. Vyhalek, please?

Q. (By Mr. Vyhalek) Now then, Judge Ruff, showing you what has been marked as Exhibits 4-A through N respectively, would you please examine those exhibits?—. Judge, with regard to Exhibits 4-A through N, are there

any articles or other matters in there referring to the matter that is now pending here, State of Nebraska versus Erwin Charles Simants! A. Yes.

Q. And are those matters fairly representative of the publicity which you were aware of on October 21st, 1975? A. I'd have to look at the rest of these. I put one pile on my left that I personally read, that I have read. These on my right I haven't read yet.

Q. Were you aware on October 21st, 1975, that the matter of the State of Nebraska versus Erwin Charles Simants was drawing attention from the press on a statewide basis?

Mr. Kay: To which we object as incompetent, irrelevant, immaterial, calling for a conclusion of the witness; no proper foundation.

The Court: Overruled.

54 A. Yes.

Q. (By Mr. Vyhalek) And were you aware on October 21st, 1975, that the matter of the State of Nebraska versus Erwin Charles Simants was attracting national attention from members of the press? A. Yes.

Q. And, in looking over Exhibits 4-A through N, would you say that those articles that are contained therein with regard to this matter, State of Nebraska versus Erwin Charles Simants, are representatives of the publicity that you were aware of on the 21st of October, 1975? A. May I look at the rest of the articles first?

Q. Yes.— A. Yes.

Q. Now, we have been discussing the newspapers, you can always get your hand on a newspaper. But, how about radio and television, were you aware of press coverage on this matter? A. Yes.

Q. Had you, yourself, prior to and on October 21st of 1975, been called by members of the various media?

Mr. Kay: To which we object as incompetent, irrelevant, immaterial.

The Court: Overruled.

55 A. Prior to October 21st?

Q. (By Mr. Vyhalek) Yes, sir. A. Yes.

Q. And were you also called on October 21st? A. Yes.

Q. And were you called on October 22nd?

Mr. Kay: To which we object as incompetent, irrelevant, immaterial; no proper foundation.

The Court: Overruled.

A. Yes.

Mr. Vyhalek: At this time we would offer Exhibits 4-A through N as being the articles contained in those exhibits referring to the matter of State of Nebraska versus Erwin Charles Simants, which in this case is docketed as B-2903, is that right?

The Court: B-2904.

Mr. Vyhalek: B-2904—to show that this is the publicity surrounding the matter, at least up until and including the date of the last paper.

Mr. Kay: I would like to ask the witness some questions on voir dire!

The Court: You may.

Mr. Kay: May I approach the witness?

The Court: You may.

56 Cross Examination

By Mr. Kay:

Q. We have Exhibits, as I understand it, 4-A through 4-N, is that correct? A. Yes. That's what we're referring to. I didn't pay any attention to the exhibit markings, but I believe that is correct.

Q. Now, are you at this time aware of or prior to this time were you aware of all of those exhibits? A. No.

Q. Would you please look at the exhibits and tell us which ones, pick out which ones you weren't aware of. A. I was not aware of!

Q. Yes. A. Four-N.

Q. You just pick them out and I'll hand them to you. A. I think I had them in order—.

Q. Now, you have just handed me a number of exhibits. Are these the exhibits that you were not aware of? A. That's correct.

Q. You had never seen them before you came into
57 court here tonight? A. These actual clippings?

Q. Yes. A. No.

Q. Or similar clippings of newspapers. A. Well, maybe similar papers, but not—

Q. I mean these specific articles. A. No, no.

Q. All right. So we can straighten the record out, you're referring to 4-E,— A. That's correct.

Q. And you're referring to 4-I. A. That's correct.

Q. And you're referring to 4-F. A. That's correct.

Q. And you're referring to 4-G. A. That's correct.

Q. And you're referring to 4-L. A. That's correct.

Q. And you're referring to 4-N. A. That's correct.

Q. Four-N, of course, is a copy of the Denver Post, is it not? A. Yes, it is.

Q. I'll set these aside. Now, do I understand you, Judge, that when you entered this order on October
58 21st, 1975, that you based this order partially on what you read in the newspapers and heard on the TV and heard on the radio? A. "Partially" would be a fair statement.

Q. Yes. And at this particular hearing was there any evidence presented? A. At what particular hearing?

Q. At the hearing on the motion to enter the gag order. A. In open court there was no evidence presented, other than statements by counsel.

Q. Yes. Were there any exhibits offered? A. No.

Q. Okay. Now, you say that you entered that on the 21st. Of course, Exhibit 4-J, as I understand it, we stipulated to this, that that is an article from the October 21st issue of the Omaha World-Herald, is that correct? A. I've seen an article similar to this in the World-Herald. I can't say that this is the exact one and I don't see, can't say what date this is. I can't see a date on here.

Q. Did you read that particular article—not this particular exhibit?

Mr. Vyhalek: Your Honor, I object on the
59 grounds that there is no proper and sufficient foundation. The articles are only being offered to show the amount of publicity and that the judge was aware of the publicity at the time of the entry of the order and now. They are not offered for the purposes of each and every specific article. In other words, it's not, as I pointed out earlier, the judge in a matter such as this has a duty to come forward perhaps spontaneously with an order of this type in one fashion or another, and it can't be expected that anyone has read every newspaper article, heard every radio broadcast, saw every TV program before he makes a decision such as this. He must be aware, and that's the only thing, that such publicity was around. And that's why that is offered.

The Court: I agree with you, Mr. Vyhalek. But I do think that Mr. Kay has got a right to find out what articles Judge Ruff has read.

(Thereupon, the last-pending question was read by the Reporter, to-wit: "Question: Did you read that particular article—not this particular exhibit?")

A. To the best of my knowledge, I can't really
60 remember what day. It looks familiar, it looks like I've read it.

Q. (By Mr. Kay) Prior to the time that you entered your order on October 21, 1975? A. That I really can't tell you.

Q. So, you can't say really whether you based your opinion partially on Exhibit 4-J or not then. A. That is correct.

Q. Now, I am handing you what has been identified as Exhibit 4-K, which is an issue, I believe, October 20th issue of the Kansas City Times. When did you read that exhibit? A. The afternoon of Monday, October 20th.

Q. The same date the paper was issued? A. That's correct.

Q. And where did you get that exhibit? A. From Judge Byrnes.

Q. Do you know where he got it? A. I believe—

Mr. Vyhalek: Object to that, Your Honor, I think it's completely irrelevant.

The Court: Sustained.

Q. (By Mr. Kay) Well, is the Kansas City Times circulated in North Platte, Nebraska?

61 Mr. Vyhalek: Object to that—well, go ahead and answer it.

A. I really don't know.

Q. (By Mr. Kay) Now, you have handed me Exhibit No. 4-H, and tell me whether you read that prior to the hearing? A. I didn't.

Q. Well, that was in the stack that you gave me, so, we'll put that over in the other stack. A. If your question is prior to the hearing, that would have to go to the other stack, if that's going to be your—

Q. In other words, you didn't base your order on Exhibit 4-H. A. No.

Q. You couldn't have because Exhibit 4-H was published after the hearing. A. That's right.

Q. Now, here's Exhibit 4-D, will you tell us what that has to do with this case, really? A. Not much.

Q. Is it detrimental in any way

Mr. Vyhalek: I object to that, Your Honor.

The Court: Let him finish his question.

Mr. Kay: I'll withdraw the question, Your Honor.

62 The Court: Very well.

Q. (By Mr. Kay) Did you take that particular exhibit into consideration in entering your order on October 21st, 1975? A. No.

Q. So, we'll put that in the other stack, is this right? A. If that's what you want to do with it.

Q. Well, I mean, is that true, I mean, you didn't consider that? A. No, no-way did I consider that.

Q. Now, we're down here to Exhibit 4-A, which is the issue of—what is the date on that newspaper? A. The 23rd.

Q. And what was the date of that hearing? A. The hearing on the motion was on the 21st.

Q. So, you didn't— A. No, I did not.

Q. So, put that over in this stack. Now, here's Exhibit 4-M. What is that? A. October 20th.

Q. Nineteen seventy-five? A. Yes.

Q. That's an issue of the North Platte Telegraph? A. That's correct.

63 Q. Did you read that prior to the hearing on October 21st, 1975? A. Yes, I did.

Q. And did you take that into consideration when you entered that order on the evening of October 21st, 1975? A. I can't say specifically, but I'm sure—

Q. Well, did you read it or did you know it prior to the hearing, that's all I'm asking? A. Yes, I did. I'm sure that would have to be part of the consideration.

Q. Now, I'm handing you 4-B. Would you look at that? A. That's the same exhibit.

Q. So, we really can't count that twice, can we? It's the same thing.

Mr. Vyhalek: I agree that counsel has a right to cross examine, but I think that's going somewhat without the scope of the hearing.

The Court: Sustained.

Q. (By Mr. Kay) Are they the same thing? A. Yes, they are the same thing.

Q. I am handing you Exhibit No. 4-C, ask you what that is! A. That is an article from the North Platte 64 Telegraph.

Q. What date? A. I don't know.

Q. I think we have stipulated, and there's a mark there— A. Oh, the 21st.

Q. Is that the same day you entered your order, isn't that correct? A. Yes, it is.

Q. And did you read that article prior to the hearing?
 A. Yes, I did.

Q. And did you base your opinion partially on that exhibit? A. I would guess, yes. Partially, again, the question is "partially," yes, partially.

Q. So, of all these exhibits here you're saying that you read Exhibits 4-C, 4-J, 4-K, and 4-M, four exhibits, you read those prior to the time that you entered the order. A. That's correct.

Q. And you based your opinion partially on those exhibits. A. Partially.

Mr. Kay: Okay. We have no objection to the
 65 offer.

The Court: Exhibits Nos. 4-A to 4-N, inclusive, are admitted in evidence as they are material. Of course, there are parts of the exhibits that have nothing to do with this case. They are admitted only for their relevant portions thereof.

Re-Direct Examination

By Mr. Vyhalek:

Q. Your Honor, in addition to Exhibits 4-A through N were you generally aware of publicity other than newspapers? A. Yes.

Q. And that included radio and TV. A. Yes.

Q. And also included conversations, did it, around the courthouse and in the North Platte community? A. Conversation around the courthouse was the main criteria.

Mr. Vyhalek: Your witness.

The Court: You may inquire, Mr. Kay.

66 Re-Cross Examination

By Mr. Kay:

Q. I may have asked you one or two of these questions, but, as I understand it, there was no evidence given at

the hearing on October 21st, 1975. A. At the hearing in the courtroom, that's correct.

Q. And at anytime did you give any notice to anybody, to any of the news media, that there would be a motion filed and that there would be a hearing on the motion prior to the hearing on the motion?

Mr. Vyhalek: To which we object as being incompetent, irrelevant, immaterial, and doesn't tend to serve any purpose in this inquiry.

The Court: Overruled.

A. No, I did not.

Q. (By Mr. Kay) And you were aware of the fact, of course, at about 7:30 p.m. that the media was represented by legal counsel, were you not? A. Yes.

Q. And, as I understand it, there was absolutely no evidence offered at the hearing. A. At the hearing, that's right.

Q. And you based your findings in your order solely upon what you had read in the newspapers, and
 67 what you had seen on TV, and what you had heard on the radio and statements of counsel. A. Primarily statements of counsel.

Q. Which were not of record. A. Which were not of record, that's correct.

Mr. Vyhalek: I would move to strike that, Your Honor, on the grounds that because of the nature of this matter that can be prejudicial.

The Court: I'm not sure that I understand you, Mr. Vyhalek.

Mr. Vyhalek: Well, okay, I'll withdraw it, Judge.

The Court: All right.

Q. (By Mr. Kay) This order you entered, it was your intent to make a blanket order on all the testimony at the preliminary hearing, a gag order on all the testimony offered at the preliminary hearing. A. At the time the order was signed?

Q. Yes. A. That is correct.

Q. So, there was a prior restraint as to what would be disseminated at the hearing.

Mr. Vyhalek: I'll object to that as calling for a conclusion, incompetent, irrelevant, immaterial, without 68 the scope of the inquiry, and invades the province of the Court in the inquiry of this matter.

The Court: Sustained.

Q. (By Mr. Kay) Did I call you on the morning of October 22, 1975, prior to the preliminary hearing and ask you for time to discuss this order with you as counsel for the news media? A. You did.

Q. And what did you tell me, Your Honor? A. I said — You called around, I believe, just shortly before 9 a.m. and I said that I would grant you that time and we would meet at 9:30.

Q. Yes. And then did you call me thereafter? A. Approximately five minutes, maybe 10 minutes later.

Q. And what did you tell me at that time? A. I don't remember the exact words, but I'm sure at that time I informed you there were vehement objections by opposing counsel.

Q. Now, are you referring to whom? A. The county attorney's office and the public defender's office.

Q. And what were they objecting to? A. You standing.

Q. And what did you tell me?

69 Mr. Vyhalek: I fail to see the relevancy of this, Judge, because the record has already established that Mr. Kay was present at that hearing.

The Court: Overruled.

A. I don't quite —

Q. (By Mr. Kay) I'm referring about the time. You first told me, isn't this correct, that the thing would be conducted at 9:30. A. Until 9:30, that's correct.

Q. Is that correct? A. That's correct.

Q. And then you called me back and what did you tell me? A. That it would not be.

Q. And why? A. Because of the vehement objections of opposing counsel, and they informed the Court that the defendant was in the courtroom, that the press had no standing, that the preliminary hearing was set for 9 o'clock and that it should go-off at 9 o'clock.

Q. So, in effect you took their word that the press had no standing. A. That is correct.

Mr. Kay: That's all.

70 Mr. Vyhalek: Judge Ruff, —

The Court: Just a minute. Mr. Larson, you may inquire.

Cross Examination

By Mr. Larson:

Q. You made no independent determination as to whether or not in your opinion there was standing or whether the criminal process should be delayed? A. I had to make a determination. My determination was, from everything that was being submitted to the Court, without any authority, that they had no standing and that the preliminary hearing should go-off.

Q. Were you advised as to the fact that all witnesses were present in court? A. Yes, I was.

Q. Both sides were ready to go? A. That's right. —

The Court: Just a minute. Are you finished, Mr. Larson?

Mr. Larson: That's okay, yeah.

The Court: Have you finished?

Mr. Larson: Yes, Your Honor.

71 The Court: Mr. Vyhalek, you may inquire.

Further Re-Direct Examination

By Mr. Vyhalek:

Q. Judge Ruff, on the morning of 22, October, 1975, were you aware that pursuant to the statutes of the State of Nebraska the defendant had a right to a preliminary hearing within four days?

Mr. Kay: To which we will object as invading the province of the Court. The Court knows what the law is.

Mr. Vyhalek: All I'm asking is whether he was aware of it.

The Court: I presume that the Judge knows the law. The objection is sustained.

Mr. Vyhalek: Your Honor, what I'm trying to show here is that on the morning of October 22nd the representatives of the press attempted to delay the preliminary hearing which this man is entitled to within four days under Nebraska Statute in order to present their matters as they are today. And you can see the time that we've spent on this.

72 The Court: I appreciate that, Mr. Vyhalek, but I still assume that Judge Ruff knows the law. The objection is sustained.

Mr. Vyhalek: I have nothing further.

Further Re-Cross Examination

By Mr. Kay:

Q. Would you say your stand was that you wouldn't give counsel for the press 30 minutes?

Mr. Vyhalek: I object to that.

The Court: The objection is sustained. I think it tends to be argumentative.

Mr. Kay: That's all.

The Court: Mr. Larson?

Further Re-Cross Examination

By Mr. Larson:

Q. What was the nature of the statements given by counsel at the hearing?

Mr. Kay: To which we object as incompetent, irrelevant, immaterial.

The Court: Overruled.

A. Would you repeat the question? I didn't understand it.

Q. (By Mr. Larson) What was the nature of the statements given by counsel at the hearing on the evening of October 21st, 1975? A. By counsel?

Q. On behalf of the State and on behalf of defense counsel. Much has been made of the fact that you had no evidence before you. A. Oh, the statements, the statement by the county attorney laid background information as to the news media releases, went through some of it, referred to television reports, radio reports and newspaper reports. I believe Mr. Vyhalek joined in that.

Mr. Larson: That's all.

The Court: I think we're finished. You may step down.

Mr. Kay: I would like to—

The Court: You want to ask one more question?

Further Re-Cross Examination

By Mr. Kay:

Q. I would like to know the statement that counsel for the media said? A. For the media?

Q. Yes. A. Quite a few statements. I'm trying to 74 remember the salient ones. You brought it to the attention of the Court that the fact that judicial proceedings in Nebraska were open to the public.

Q. Any other, had any other counsel brought that fact to your attention in their statements? A. That particular statute, no. You also brought it to the attention of the Court the concern of the news media.

Q. For a fair trial? A. Pardon? For a fair trial, that's correct, and made certain offers on behalf of the news media in connection with a fair trial.

Q. Generally we resisted the motions, did we not? A. Yes, you did.

Mr. Kay: That's all.

Mr. Vyhalek: Judge Ruff—am I out of turn?

The Court: I think you finished your inquiry of this witness several times.

Mr. Vyhalek: There were other questions asked with regard—

The Court: If you would limit your questions strictly to those questions on re-re-cross examination.

75 Mr. Vyhalek: Heavens.

The Court: There were only two. That was as to what Mr. Kay said. Mr. Larson inquired as to what the other attorneys said, and Mr. Kay inquired as to what he said.

Mr. Vyhalek: We will pass the witness.

The Court: You may step down, sir.

Thank you.

Judge Ruff: Thank you.

Mr. Kay: I have no objection, Your Honor, the witness can be excused. I know he has had a hard day.

The Court: You may be excused. Of course, you're welcome to stay.

Judge Ruff: Thank you, Your Honor.

Mr. Vyhalek: Thank you, Judge.

The Court: Call your next witness.

Mr. Vyhalek: Rest.

The Court: Mr. Larson, have you witnesses that you desire to call with reference to these two motions by the defendant?

Mr. Larson: No, Your Honor. The State rests.

76 The Court: Mr. Kay, have you witnesses that you desire to call?

Mr. Kay: No, Your Honor.

The Court: Very well. I will now listen to arguments on all three motions. I'm referring now to the motion by the Nebraska Press Association and others, the motion by the defendant to close all pretrial hearings, and the motion by the defendant to continue the county court order for the protection against publicity. I will allow you to argue first, Mr. Kay.

(Thereupon, argument was made by Mr. Kay, Mr. McGill, Mr. Larson and Mr. Vyhalek. After which, the following further proceedings were had, to-wit:)

The Court: There is no question in my mind that one of the constitutional guarantees is the right of free press and the right of free speech. There has been a comment here in the argument that this at times conflicts with a fair trial. I recognize this conflict. I do believe that it is possible to maintain both constitutional guarantees
77 simultaneously. It must be done with considerable delicacy and restraint on the part of all parties. And it is for that reason that the Bar-Press Guidelines were adopted.

The requirement of a fair trial is uppermost in the minds of most jurists and lawyers. It recognizes that they may conflict with a free press, but this Court and I think other courts are not willing to sacrifice a fair trial in order to get a free press, and are not willing to go along with Mr. McGill's proposition that it would be even justified to have mistrials in order to guarantee the free press. I do not intend to get us into a mistrial in this case, and feel that we still can have free press in order to accomplish both objectives simultaneously.

I must condemn the past courts that are secret. We have seen many times that secret courts are bad courts. In England you had the Court of the Star Chamber, and in Spain you had the Inquisitions; and these are courts that are to be condemned because they were secret courts and they were bad courts. I think that the court system of the United States is an exemplary system, perhaps the best system in the world. And publicity of the happenings

78 in court is welcomed. The courts are better off as the light of day shines on them, for two reasons, one is that they are good and if the publicity is given, why, it necessarily must show them in a good light, and the other is the mere fact that the light of publicity is shining on them, the courts become better.

Now, with reference to the motions that are before me here: The Court does grant on a temporary basis the third verbal motion that the defendant made, that the county court's order dated October the 22nd, 1975, dealing with a

protective order with respect to pretrial publicity be continued. This is a temporary continuance because of the press of time and because of the lack of background information that this Court has.

I think in all candor that Judge Ruff said that he entered his order with a press of time, and I certainly recognize the press of time that he was working under. Prior to entering that order, I think I'd be less than candid if I did not reveal that he and I discussed it and discussed some of the problems that would accompany such undesirable publicity. I do think that as we look at the order that

79 the order should be modified. I do propose to modify the order and will issue a modified order on—

Mr. Vyhalek: Monday is a Court holiday, Judge.

The Court: I appreciate that. On October the 27th at 2 o'clock in the afternoon or before. That is a Court holiday, I am aware of that.

Until that time, until that modified order is published, the order of the county court is adopted by this court as an order of this court and the members of the press are so enjoined.

The exception to this is with reference to reporting the happenings in this court today. There is no limitations upon reporting the happenings in this court today, except as they would conflict with the Bar-Press Guidelines. I refer specifically to statements made by attorneys as to possible statements made by the defendant, and would call the press' attention to the fact that to report such a thing would be in contravention of the Bar-Press Guidelines, and I would call your attention to the fact that the Bar-Press Guidelines were specifically incorporated in Judge Ruff's order.

80 I do feel that there is a clear and present danger.

I think that the clear and present danger is tacitly recognized by the press here when at least one member of their staff indicates that he feels that it would not be possible to get an unbiased jury in Lincoln County.

I think we all must recognize the unusual nature of the charges against the defendant, and the relatively bizarre proceedings leading to those charges, and by that very nature I feel that there is a clear and present danger.

And, it is for that clear and present danger that the Court does at this time extend the county court's order on a temporary basis.

The Court denies the defendant's second oral motion to close all pretrial hearings. And the Court takes under advisement the motion made by the Nebraska Press Association and will render an answer to that motion on or before October the 27th at 2 p.m.

Are there any comments that counsel have to make with reference to the order of the Court? Court is now adjourned.

(Thereupon, at this time, 10:28 o'clock p.m., Court was adjourned.)

81 Thereupon, At this time, 2:52 o'clock p.m., C.S.T. on October 27th, 1975, all counsel appearing as hereinbefore set forth, and the defendant appearing in person, the following further proceedings were had, to-wit:

The Court: Since last Thursday there has been an application by the Nebraska Professional Chapter of the Society of Professional Journalists, known as Sigma Delta Chi, to join in the pleadings previously filed by the Nebraska Press Association, et al. Sigma Delta Chi is so allowed to join.

Mr. Vyhalek: If it pleases Your Honor, may I note my particular objection to this particular intervenor. I don't believe I did the other night. We would object to their intervention on the grounds that we asserted against the intervention originally, and also would object on the further grounds that in their application they do not set forth standing in and of themselves as to whether or not they are an unincorporated association, an association, cor-

poration or whatever, to intervene in this matter, and, therefore, have no legal standing.

The Court: The objection is noted. The objection is overruled, and Sigma Delta Chi is allowed to join in
82 a pleading previously filed by the Nebraska Press Association and others.

At the conclusion of the hearing on last Thursday I announced that because of the press of time I would adopt the order of the court entered by the Lincoln County Court on October the 22nd. I have now given consideration to the order of the Court, and it is my opinion that the order of the Court as entered in this case is too broad.

In modifying the order of the Court I want to give my grateful acknowledgement to the attorneys for their help in finding the truth and the correct order. I appreciate the wide divergence of opinion of the various attorneys, and recognize that this order is unacceptable to all of the attorneys involved; and that the three different sets of attorneys, those representing the Nebraska Press Association, those representing the State, and those representing the defendant, have each expressed strong objections to the order as it is entered. In spite of those strong objections voiced by each of them, I do still thank them for their professional attitude and for the assistance they have given me in attempting to avoid gross error.

83 The Court will reduce its order to writing as soon as practically possible. The order of the Court is that on this 27th day of October, 1975, the same being one of the regular days of the September, 1975 Term of the District Court in and for Lincoln County, Nebraska, the above-entitled case comes on for determination of the defendant's motion for a continuation of the Lincoln County Court's order with respect to pretrial publicity.

The Court, being duly informed, finds because of the nature of the crimes charged in the Complaint that there is a clear and present danger that pretrial publicity could impinge upon the defendant's right to a fair trial, and that

an order setting forth the limitations of pretrial publicity is appropriate, and an order for the news media and public's accommodation to physical facilities is appropriate.

It is therefore ordered that the order of the Lincoln County Court which was adopted by this Court on October 23, 1975, is hereby terminated.

The Court further orders that pretrial publicity shall be in accordance with the following order:

The standards set forth in the Nebraska Bar-
84 Press Guidelines for Disclosing and Reporting of In-
formation Relating to Imminent or Pending Crim-
inal Litigation are approved and are hereby adopted as the
Court Order for dissemination of information in this case;
that a copy of such guidelines is attached hereto and by
this reference made a part hereof. Such guidelines should
be clarified as follows:

First: It is hereby stated the trial of the case com-
mences when a jury is impaneled to try the case, and that
all reporting prior to that event, specifically including
the preliminary hearing, is "pretrial" publicity.

Second: It would appear that defendant has made a
statement or confession to law enforcement officials, and
it is inappropriate to report the existence of such state-
ment or the contents of it.

Third: It appears that the defendant may have made
statements against interest to James Robert Boggs, Amos
Simants and Grace Simants, and may have left a note in
the William Boggs residence, and that the nature of such
statements, or the fact that such statements were made, or
the nature of the testimony of these witnesses with refer-
ence to such statements in the preliminary hearing will not
be reported.

85 Fourth: The non-technical aspects of the testi-
mony of Dr. Miles Foster may be reported within
the guidelines and at the careful discretion of the press.
The testimony of this witness dealing with technical sub-

jects, tests or investigations performed or the results thereof, or his opinions or conclusions as a result of such tests or investigations will not be reported.

Fifth: The general physical facts found at the scene of the crime may be reported within the guidelines and at the careful discretion of the press. However, the identity of the person or persons allegedly sexually assaulted or the details of any alleged assault by the defendant will not be reported.

Sixth: The exact nature of the limitations of publicity as entered by this order will not be reported. That is to say, the fact of the entering of this order limiting pretrial publicity and the adoption of the Bar-Press Guidelines may be reported, but specific reference to confessions, statements against interest, witnesses or type of evidence to which this order will apply, will not be reported.

In keeping with the physical facilities of the
86 Lincoln County Courthouse, the Court orders the following:

First: No photographs will be taken on the third or fourth floors of the Lincoln County Courthouse at any time during the conduct of this case.

Second: The main hall on the third floor of the Lincoln County Courthouse will be cleared of all personnel while the jury is moving in or out of the courtroom. When the jury is excused during the conduct of the case, all counsel, news media personnel, spectators, or other persons present in the courtroom will remain seated until the jury has left the courtroom and cleared the main third floor hallway.

This order will remain in effect until further order of the Court or until completion of this case.

The Order will be reduced to writing and will be signed by the Court as soon as physically possible.

Is there anything else to be brought before the Court on this case? Court is adjourned.

Mr. Vyhalek: I'm sorry, Your Honor.

The Court: Go ahead, Mr. Vyhalek.

87 Mr. Vyhalek: Your Honor, in line with this order, we would at this point make our motion a continuing motion with regard to the closing of any and all pretrial reporting of facts or the surrounding circumstances of this case as we anticipate the filing of motions and make that motion in anticipation of those filings.

The Court: I do understand the continuing nature of your motion, and the Court has refused and does now refuse to grant the motion. Court is adjourned.

Exhibit 2

Filed Oct. 19, 1975—Ronald A. Ruff, County Judge

CRIMINAL DOCKET

STATE OF NEBRASKA

vs.

ERWIN CHARLES SIMANTS

JUDGE'S MINUTES

10-19-75—Defendant appears in Court for arraignment. The complaints are read, and the defendant's rights are given, and the Statute is read. Public Defender is appointed to represent the defendant, Marvin Holscher and Milton Larson appear for the State, Leonard Vyhalek and Keith Bystrom appear for the defendant as Public Defenders.

Evidence is taken from the County Attorney for the purposes of setting bond. Leonard Vyhalek objects to the setting of a bond at this time and clearing of spectators from the courtroom for the purposes of taking evidence. Both objections are overruled.

Evidence is submitted by Marvin Holscher, Chief Deputy County Attorney.

The Court finds that presumption is great that the defendant has committed the crime of murder.

IT IS THEREFORE ORDERED that the defendant, ERWIN CHARLES SIMANTS, be held without bond pending further action in this Court.

*Preliminary hearing is set for Wednesday, October 22nd, 1975, at 9:00 a.m.

/s/ RONALD A. RUFF

Ronald A. Ruff, County Judge

10-21-75—Motion filed by County Attorney to restrict news media coverage on the preliminary hearing. Present in the courtroom are Leonard Vyhalek and Keith Bystrom for the defense, the defendant, Erwin Charles Simants; Milton Larson, County Attorney, and Marvin Holscher, Deputy County Attorney. Harold Kay appears on behalf of the news media. Defense orally joined in the motion made by the prosecution and further moved that the hearing be closed entirely to the public. The Court overrules the portion of defense motion that pertains to closing to the public. Defense moves for sequestration of witnesses. Motion sustained. State moves for sequestering of witnesses. Motion sustained. Arguments are given by Harold Kay for the media, Leonard Vyhalek for the defense, and Milton Larson for the County Attorney concerning the motion for restrictive order. The Court takes the motion under advisement.

10-21-75—After due consideration of the arguments submitted to the Court on the motion for restrictive order, the Court finds the motion is well taken and it is hereby granted.

Restrictive order to be filed in the Erwin Charles Simants file.

/s/ RONALD A. RUFF

10-22-75—A preliminary hearing is held. Milton Larson, Marvin Holscher, John Murphy, and John Thomas appear as attorneys for the State of Nebraska. Leonard Vyhalek and Keith Bystrom appear as attorneys for the defendant. Defendant appears in Court. The following witnesses are placed under oath and testify: Dr. Miles Foster, Herbert Miesner, James Boggs, Amos Simants, June M. Lindstrom, James Burnett, Dan Reece, Terry B. Livengood, and Sheriff Gordon D. Gilster. At conclusion of the testimony submitted to the Court, the Court finds that beyond any

reasonable doubt the following crimes have been committed: Murder in the First Degree of Henry Kellie; Murder in the First Degree of Audrey Marie Kellie; Murder in the First Degree of David Kellie; Murder in the First Degree of Daniel Kellie; Murder in the First Degree of Deanne Kellie; and Murder in the First Degree of Florence Kellie.

IT IS FURTHER THE JUDGMENT OF THIS COURT that there is probable cause that ERWIN CHARLES SIMANTS has committed these crimes.

IT IS THEREFORE ORDERED that ERWIN CHARLES SIMANTS be bound over to the District Court of Lincoln County, Nebraska, to stand trial on six (6) counts of First Degree Murder.

Bail is denied.

/s/ RONALD A. RUFF
Ronald A. Ruff, County Judge

Oversize foldout(s) found here in
the printed edition of this volume
are found following the last page
of text in this microfiche edition.

SEE NO _____ /

A subservient right is no right at all

"I, for one, have great difficulty in understanding why, after 175 years of reasonably successful administration of criminal justice, we suddenly find that the tried and tested remedies for assuring a fair trial are inadequate. I find it difficult to understand why the only choice we have is to sacrifice one constitutional right to preserve another." — Judge Frank W. Wilson, United States District Court of Chattanooga, Tenn., in a speech at the University of Chattanooga Aug. 22, 1967.

"When the two rights come in conflict, the right of a free press must be subservient to the right of due process." — Lincoln County Court Judge Ronald Ruff, North Platte, Oct. 22, 1975.

The free press-fair trial controversy which has occupied the attention of newsmen and courts and attorneys in an endless dialogue over the past decade or so has visited itself upon North Platte and Lincoln County. We did not ask for it. We do not enjoy it. We would just as soon it would go away. But it won't.

Pressed by attorneys for the defendant to close a preliminary hearing to the press and public, and pressed by attorneys for the state to restrict reporting on at least part of the hearing, Judge Ronald Ruff ruled that the hearing should be open but that none of the testimony could be reported. He expected no-one to be satisfied, and no-one was.

We can sympathize with Judge Ruff. He was caught in the center of a dilemma which cannot be resolved except by imagining that some parts of the Bill of Rights are less important than other parts. If any court, at any given moment, can choose to ignore or make subservient one part of the Constitution, it seems to the untrained layman, at least, that all parts become very weak guarantees.

It also seems to this untrained layman that the legal profession has manufactured this dilemma. Out of good intentions, no doubt, and with the help of some occasional bad judgment and bad reporting on the part of the press. But it is manufactured, nevertheless, and unnecessarily so.

Let us cite Judge Wilson again. His speech has no legal standing, of course. But then attorneys for both sides quoted from a textbook more than they quoted cases to support their cause in a hearing on this subject Tuesday. So perhaps we may be permitted this license.

"Certain it is that the press coverage of crimes and criminal proceedings makes more difficult the job that a judge has of assuring a fair trial. But no one has yet shown that it renders the job impossible. In fact, no one has yet shown, to the satisfaction of any court, an identifiable instance of miscarriage of justice due to press coverage of a trial where the error was not remedied. So remedies short of curtailing freedom of the press do exist!"

To this untrained layman, it seems the root of the matter is that the members of the legal profession somewhere along the line lost faith in the jury system. More specifically, the bar abandoned the notion that jurors properly instructed might be able to decide a case fairly and objectively on the evidence presented in court, even though they

might previously have read or heard some other information.

Not all jurors can, of course. There is machinery for eliminating in advance those potential jurors who seem unlikely to set aside their previous opinions and prejudices. But somehow the bar has developed a mental attitude which presupposes any potential juror who has read any prejudicial information has that frozen in his mind and will be forever unable to turn loose of it. From that assumption have come arguments and decisions that would be ludicrous if the matters at stake were not so serious.

It is a complete reversal. In the early days of trial by jury, an attempt was made to find jurors who already knew something about the case, on the theory they would be best qualified to evaluate the evidence and arguments. We would not suggest going back to that premise. But we would suggest that attorneys and courts who pursue too vigorously the notion that jurors with any prior information are hopelessly contaminated may succeed in destroying the jury system along with the free press tradition.

Judge Ruff believed that he had no choice but to restrict the press in order to do his duty in protecting the defendant's right to a fair trial. The press of Nebraska disputes that, and the reader may wonder why. Many preliminary hearings are not covered in detail. In many others, the press voluntarily refrains from reporting segments which would be prejudicial, sometimes of its own volition and sometimes at the request of judge or attorneys. But when any court lays down a rule that may become precedent, and thus may have the effect of law, the press has an obligation to oppose such restriction.

Let us cite Judge Wilson again:

"...the participants should always bear in mind that freedom of the press is the right of the public to know....No publisher or group of publishers and no member of the bar or bar association has the prerogative to bargain away the public's right to know."

And again:

"I cannot see why this nation need be called upon to sacrifice the First Amendment upon the altar of the Sixth, nor the reverse thereof."

"I know of no greater bulwark to the preservation of fair trials than the continuation of a free press. I cannot think of any greater deterrent to the maladministration of justice than to open every single judicial proceeding to the most complete exposure to those who desire to report the facts of what is happening in the courtroom. The public is entitled to know not only that our courts are administering justice, but also how they administer justice."

And once more from Judge Wilson, who obviously is in a minority among his associates:

"In the heat of controversy what is oftentimes needed is a faith in principles, not a hasty change in the rules. Those who would curtail freedom of the press in the name of assuring a fair trial do a disservice to both. We may draw a lesson from this controversy for living in these controversial times. It is that freedom of the press, like all freedoms, is never won. Rather, like all freedoms, it is always only in the process of being won."

NORTH PLATTE TELEGRAPH

An Independent Newspaper, Founded April 14, 1881



James W. Kirkman, Publisher

Keith Blackledge
Editor and Director
of Public Affairs

Donald E. Wing
General Manager

Published by Western Publishing Co.
James C. Seacrest, President

Editorial, Opinion and Feature Page

4 Thursday, October 23, 1975

EXHIBIT NO. 4-D

Oversize foldout(s) found here in
the printed edition of this volume
are found following the last page
of text in this microfiche edition.

SEE NO __

2, 3, 4

Newspaper Clipping

North Platte Telegraph, October 21, 1975

Chesapeake, Va.; seven grand
and two great-grandchildren.

10/21

Kellie Family

SUTHERLAND — Combined services
for James Henery Kellie, 66; Audrey M.
Kellie, 57; David L. Kellie, 32; Deanna
Lynn Kellie, 7; Daniel L. Kellie, 5; and
Florence Marie Kellie, 10; who died
Saturday night, will be Wednesday at 2
p.m. at the Sutherland High School gym-
nasium.

Officiating at the services will be the
Rev. Verneeda Brown of the Wesleyan
Church of Arthur and the Rev. Nels
Ibsen of the Wesleyan Church of
Sutherland.

Burial will be in Sutherland Cemetery
with Ryan and Tickle and Adams and
Swanson Funeral Homes of North Platte
in charge of services.

The bodies are lying in state at the
Ryan and Tickle Funeral Home. The
caskets will not be open.

Memorials have been established.

Newspaper Clipping

Omaha World-Herald, October 23, 1975

Sexual Assault Charges^{w N} ^{9/23} Added in Simants' Case

From World-Herald Press Services.

North Platte, Neb. — Erwin Charles Simants was ordered Wednesday to stand trial on charges of murder and sexual assault after a preliminary hearing in which news coverage of testimony was barred by order of Lincoln County Judge Ronald Ruff.

Omaha attorney Stephen McGill and North Platte attorney Harold Kay were scheduled to seek an order from Lincoln County District Court at 1:30 p.m. today to overturn the gag order. The attorneys have been retained by various news organizations.

Simants was arrested Sunday and charged with six counts of murder in connection with the

fatal shooting Saturday of six members of the Henery Kellie family of Sutherland, Neb.

After reviewing autopsy reports, Lincoln County Atty. Milton Larson filed an amended complaint Wednesday at the opening of Simants' preliminary hearing. The amended complaint added to each of the six counts that the murders may have been committed "in the perpetration of a sexual assault in the first degree."

First-degree sexual assault was defined in LB 23 passed by the 1975 Legislature. The bill, the first revision of Nebraska's rape statutes in 100 years, replaced the word "rape" in the law with two degrees of sexual assault.

First-degree sexual assault is defined in the law as "sexual penetration" of the victim.

Simants is accused of fatally shooting Henery Kellie, 66; his wife, Marie, 57; their son, David, 32; David's two children, Daniel, 5, and Deanne, 6; and the elder Kellie's granddaughter, Florence, 10.

The hearing for Simants was held as joint funeral services were conducted in the Sutherland High School gymnasium for the victims, the Associated Press reported.

Testifying during the morning session of the four-hour hearing were Dr. Miles Foster, North Platte pathologist who examined the victims' bodies; Herbert Meissner, chairman of the Village Board of Sutherland; June Lindstrom, an ambulance attendant from Sutherland, who was among the first to arrive at the scene after the slayings; James Boggs, 13, Simants' nephew; and Simants' father, Amos.

Simants had been living at the Boggs home in Sutherland, which is next door to the Kellie home where the shootings occurred.

8 The Lincoln Star Tuesday, October 21, 1975

Kellie Had Loaned Suspect Simants \$50 For Fine

By EDWARD C. NICHOLLS

The Associated Press

Sutherland — The eldest victim in the shooting death of six persons in this prairie hamlet of 850 persons had loaned the man accused of the murders \$50 to pay a fine for intoxication only 20 days before the murders.

The Rev. Nels Ibsen of the Wesleyan Church in Sutherland said that Henery Kellie, 66, had loaned the money to Erwin Charles Simants, 29, "so he didn't have to lay it out in jail."

The Rev. Mr. Ibsen said only Kellie's closest friends were aware of the loan. He said Simants was repaying the money by repairing a cattle fence for Kellie, who raised only a small number of cattle.

"Henery was well liked and it was just his nature to help people," the pastor said. "I don't know if he had ever paid anyone's fine before, but he'd shell out money to help in other ways."

The Kellie's attended the Wesleyan Church.

Wednesday, the six victims will be buried following a mass funeral service in the gymnasium of Sutherland High School.

And on Wednesday, Simants, who had been living with his brother-in-law and sister next door to the victims, will be given a preliminary hearing on six counts of first-degree murder which were filed against him

following his capture Sunday morning.

Authorities believe the mass slayings of the elder Kellie, his wife, Marie, 57, their son, David, 32, David's two children, Daniel, 5, and Deanne, 6, and the elder Kellie's granddaughter, Florence, 10, is the worst mass murder ever recorded at one place and time in Nebraska.

In 1958, Charles Starkweather was accused of murdering 10 persons, nine in Nebraska and one in Wyoming, over a period of several days. Starkweather later was convicted and was the last person to die in the electric chair in Nebraska.

Police have yet to reveal any known motive for the slayings,

but Lincoln County Atty. Milton Larson said Monday that Simants has given authorities a statement. Larson declined to reveal any of the contents of the statement.

Following the report of the murders, police urged local residents to bolt their doors and remain indoors while some two dozen lawmen combed the town and surrounding areas for the killer.

All six victims were shot to death inside the tiny frame home of the elder Kellies on the town's northern edge. David and his two children apparently had stopped at the home for dinner, as was their custom, townspeople reported.

Officials have not identified

the murder weapon, but Lincoln County Sheriff Gordon "Hop" Gilster said a .22-caliber automatic rifle was recovered near the house.

Simants was captured Sunday outside the home of his brother-in-law, Charles Boggs. He had spent the night wandering around not far from the house and, police said, he told them he had had one beer in each of the town's two taverns Saturday night shortly after the murders.

Gilster said Simants had a record of arrests on minor matters, many of them involving driving, but had never before been arrested on any serious charge. Gilster said Simants had spent most of Saturday in the Rodeo Bar in Sutherland.

An unidentified relative said Monday that Simants was not, as officials had believed, a bachelor. The relative said Simants had been married and was either divorced or separated following the death of a child he had fathered.

Conviction of first degree murder is punishable in Nebraska by death in the electric chair or life imprisonment.

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EXHIBIT NO. 4-F
Newspaper clipping
Lincoln Star, 10/21/75

Murder charges amended, judge issues 'gag' order to news media ^{10/22}

NP Telegraph

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE NO _____

By BILL EDDY

Amended charges including possible sexual assault were filed against Erwin Charles Simants Wednesday and the preliminary hearing for him began in Lincoln County Court under apparently unprecedented press restrictions.

The amended charges were filed prior to the start of the hearing by County Attorney Milton Larson. Simants is now charged with six counts of first degree murder while "in the perpetration of or attempt to perpetrate a sexual assault."

The complaint does not specify against which person or persons the alleged sexual assault was attempted or committed.

Simants is facing the charges in connection with the deaths of six members of the Henry Kellie family Saturday night in Sutherland. The dead include Mr. and Mrs. Kellie, their son David and their three grandchildren, Florence, 10, Deanna, 7 and Daniel, 6.

Five witnesses were called to testify during the two-hour morning session of the hearing: Dr. Miles Foster, a North Platte pathologist; Mrs. June Lindstrom, emergency medical technician for the Sutherland ambulance; Herb Meissner, Sutherland mayor and a friend of the Kellies; James Robert "Butch" Boggs, 13, nephew of the defendant and neighbor to the Henry Kellies; and Amos Simants, father of the accused.

However, under an order issued by Judge Ronald Ruff, testimony of the witnesses can not be reported.

The order by Ruff was called unprecedented and a violation of both the letter and spirit of Nebraska Bar-Press Guidelines by Joe R. Seacrest, a spokesman for Media of Nebraska. Media of Nebraska is a group representing both daily and weekly newspapers in the state, plus broadcasters.

Seacrest, editor of the Lincoln Jour-

nal, has for several years been active in formulation of the bar-press guidelines, adopted in 1970.

Attorneys for the press group were considering possible legal action to have the restrictive coverage order lifted or amended. But no formal action had been started at noon Wednesday.

Meanwhile, reporters were allowed to attend the hearing and to take notes, but none of the testimony could be reported. Press group attorneys did interpret the order, however, to mean that names of the witnesses could be reported.

Ruff issued his order prior to the start of the preliminary hearing. And he called it "probably the toughest decision I've had to make in my young life."

He said that in considering a motion by Larson to restrict the coverage, he weighed the rights of the public to know what happens in court against the rights of the defendant to "due process."

"When these rights come into conflict, then the right of free press must be subservient to the right of due process," Ruff said.

He said that should the preliminary hearing be reported in detail, "There is a reasonable likelihood of prejudicial news which would make difficult, if not impossible, the impaneling of an impartial jury in the event that the defendant is bound over to the District Court for trial . . ."

Besides the press, all other persons in the courtroom were prohibited from releasing "for public dissemination . . . any testimony given or evidence adduced during the preliminary hearing."

Release or publication of any information concerning the case outside the preliminary hearing is to be in accord with the bar-press guidelines, Ruff said.

The order is to remain in effect until modified or rescinded by a higher court, Ruff said.

tion to restrict coverage of the preliminary hearing. He also asked that the hearing be closed to the public.

The Constitution, he said, "in no way militates that this hearing tomorrow or on any other date be made public."

Harold Kay, an attorney representing the North Platte Telegraph and other media, noted, however, that state law guarantees that all judicial proceedings be open to the public unless specifically prohibited by statute.

Ruff agreed with Kay's stand and refused to close the hearing to the public.

Kay told the judge that the media "do not want in any way" to deny the defendant's right to a fair trial. But he also said the press is concerned about the public's right to know.

Kay said no jurisdiction in Nebraska has ever "applied a gag rule and the press doesn't want a gag rule" in this case.

He said it is already doubtful that an unbiased jury could be found to hear the Simants case in Lincoln County and that a change of venue is almost certain. He said there have been "disclosures by law enforcement officers that would violate" Nebraska bar-press guidelines.

Names similar

The Erwin Charles Simants charged with six counts of first degree murder should not be confused with Charles Edgar Simants of Maxwell, Lincoln County Atty. Milton Larson reported.

He reported there had been some confusion about the identity of the man charged.



JUDGE RONALD A. RUFF

Newspaper Clipping

Omaha World-Herald

October 21, 1975

Motive Clue May Emerge In Autopsies

By Frank Santiago

As more information emerged about Erwin Charles Simants, the mystery of the accused slayer of six in Sutherland seemed to deepen Monday.

The 29-year-old man was apparently on good terms with Henery Kellie, one of those slain Saturday night, and knew him well enough to borrow money and move a daughter of Kellie's to Colorado.

Herbert Meissner, Sutherland's mayor, said the move was completed a few months ago and was from North Platte to Colorado.

Simants, Meissner said, is believed to have lived in Sutherland about five months, moving from North Platte with his sister, Mrs. William Boggs. He lived in the basement of the Boggs home in Sutherland. The home is next door to the Kellie home.

Also slain were Kellie's wife; David Kellie, 32, their son; David's two children, Daniel, 5,



Florence Kellie

and Deanne, 6, and Florence Kellie, 10, a granddaughter of the Henery Kellies.

\$50 Fine

Earlier, the Rev. Nels Ibsen, pastor of the Wesleyan Church in Sutherland, told the North Platte Telegraph that Henery Kellie had paid a \$50 fine for Simants three years ago after Simants was jailed for drunkenness.

There were reports that Kellie, who was retired, had loaned Simants money and that Simants was repaying the money

Please turn to Page 4, Col. 3.

Motive Clue May Emerge In Autopsies

● Continued from Page 1.

by repairing a fence for Keillie. A motive in the slaying remains a mystery, Lincoln County Atty. Milton Larson told The World-Herald Monday.

World Herald Monday
But, he said he had a "theory" and that it might be confirmed when the autopsy report on the victims is completed.

Larson said the report "may reveal the circumstances surrounding the deaths." If the report supports his theory an amended charge would be filed to the six counts of first-degree murder already placed against Simants.

Theory

Larson declined to discuss his theory, saying it might be "prejudicial" if unconfirmed. But, he said, the amended charge, if filed, may shed light on a motive.

He said the autopsy report may be ready today.

A joint funeral service for the six has been scheduled for 10 a.m. Wednesday in the Sutherland High School gymnasium. The service will begin one hour after Simants' 9 a.m. preliminary hearing in North Platte.

Kellie and his wife, both in their 60s, were described as the "salt of the early people," by Irene Peterson, a sister of Kellie's. "My God, they were the most Christian of the whole family. They were God-fearing, hard-working people," she told United Press International.



Deanna Kellie



— 10 —

Slayer Loose; Town Lives Through a Night of Fear

See What Happens Next Week

Sutherland, Neb. — As a bus carrying Sutherland High School Band members back from a football game at Chadron entered town, police officers stopped it. Quickly, they escorted the students through the darkness to their homes.

That was one of many incidents here Saturday night and early Sunday as Sutherland residents lived through a night of fear.

A slayer of six was on the loose. And many of the town's 850 residents found it difficult to sleep.

The streets were mostly deserted except for about two dozen slowly moving patrol cars. Everywhere, the cars probed the darkened streets. Visitors, many of them newsmen, were stopped and asked for identification.

Early in the evening, phone circuits were so busy it was im-

possible to make a call.

In the windows of the homes, curtains were drawn, and lights were burning.

At a downtown cafe, a team of county and state officers sat around a large table eating breakfast and planning a foot-by-foot search of the countryside at daybreak.

Sutherland residents had disappeared from the streets early. A dance at the local American Legion Hall was brought to an end shortly after 9 p.m. when the whispers of the shooting raced through town.

The tense moments were evident at the power plant, where police calls are received. The phone rang constantly with reports of sightings and noises in the night.

One woman who phoned, however, wasn't concerned about a gunman. She wanted to complain about a barking dog.

Filed Oct. 31, 1975—I. L. Boyle, Clerk District Court

IN THE DISTRICT COURT IN AND FOR LINCOLN COUNTY, NEBRASKA

Case No. B-2904, Docket 71, Page 255

THE STATE OF NEBRASKA, *Plaintiff*,

vs.

ERWIN CHARLES SIMANTS, *Defendant*.

To: THE STATE OF NEBRASKA, MILTON R. LARSON, COUNTY ATTORNEY FOR LINCOLN COUNTY, NEBRASKA, ERWIN CHARLES SIMANTS, KEITH N. BYSTROM, PUBLIC DEFENDER FOR LINCOLN COUNTY, NEBRASKA and LEONARD P. VYHNALEK, DEPUTY PUBLIC DEFENDER FOR LINCOLN COUNTY, NEBRASKA, His Attorneys:

Notice of Appeal

You and each of you are hereby notified that the applicants intend to prosecute an Appeal to the Supreme Court of Nebraska from the Order which was rendered and entered by the Court on October 27, 1975.

NEBRASKA PRESS ASSOCIATION, OMAHA WORLD-HERALD COMPANY, THE JOURNAL-STAR PRINTING CO., WESTERN PUBLISHING CO., NORTH-PLATTE BROADCASTING CO., NEBRASKA BROADCASTERS ASSOCIATION, ASSOCIATED PRESS, UNITED PRESS INTERNATIONAL and THE NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA CHI,

Applicants

By: /s/ HAROLD W. KAY
 for MAUPIN, DENT, KAY, SATTERFIELD,
 GIRARD & SCRITSMIER
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 112 North Dewey Street
 North Platte, Nebraska 69101
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 Omaha, Nebraska 68114
 Telephone No. (402) 397-9988

Attorneys for Applicants

IN THE SUPREME COURT OF NEBRASKA

No. 40471

Application for Leave to Docket

THE STATE OF NEBRASKA, ex rel NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS; UNITED PRESS INTERNATIONAL; NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA CHI; KILEY ARMSTRONG; EDWARD C. NICHOLLS; JAMES HUTTENMAIER; WILLIAM EDDY; Relators,

vs.

THE HONORABLE HUGH STUART, Judge, District Court of Lincoln County, Nebraska, Respondent.

Come now the Relators and respectfully request the Court for leave to commence an original action in the nature of a Writ of Mandamus (or any other original action—however designated—authorized by the Constitution and laws of the State of Nebraska and appropriate in these proceedings).

In support of this Application Relators state:

1. That a Petition has been delivered to the Clerk of this Court under even date herewith setting forth the facts and circumstances involved in this proceeding. All of such facts and circumstances are incorporated herein by reference as fully as if the Petition were set forth herein verbatim.
2. That a jurisdictional statement setting forth the basis of the Court's jurisdiction has also been delivered to the Clerk of this Court under even date herewith and such

jurisdictional statement is incorporated herein by reference as fully as if said statement were set forth herein verbatim.

3. That it is necessary to commence this original action in this Court for the reasons set forth in the aforementioned Petition and because:

(a) This action challenges the validity and constitutionality of an order of the District Court of Lincoln County, Nebraska, The Honorable Hugh Stuart presiding, which order was entered on the 27th day of October, 1975 and constitutes a prior restraint upon the right of Freedom of the Press protected by the constitutions of this State and Nation. The irreparable damage being suffered by Relators as the result of the entry of the order justifies the filing of this application.

(b) There is no adequate remedy at law.

(c) There is no adequate remedy in any state court other than this court.

WHEREFORE, Relators petition this Court for leave to file their petition for a Writ of Mandamus or other appropriate relief directing the Respondent to forthwith vacate the order of the District Court of Lincoln County, Nebraska, dated October 27, 1975, imposing a prior restraint upon the press and its publication of pretrial publicity in the case of the State of Nebraska vs. Erwin Charles Simants.

Respectfully submitted,

/s/ STEPHEN T. MCGILL
Stephen T. McGill
of MCGILL, KOLEY & PARSONAGE, P.C.
Suite 217, 10050 Regency Circle
Omaha, Nebraska 68114
402-397-9988

Attorneys for Relators

STATE OF NEBRASKA
COUNTY OF DOUGLAS, SS.

STEPHEN T. MCGILL, being first duly sworn, on oath deposes and states that he is one of the attorneys for the Relators herein; that he has read the foregoing Application, knows the contents thereof, and that the statements therein contained are true as he positively believes.

/s/ STEPHEN T. MCGILL
Stephen T. McGill

Subscribed and sworn to before me this 31 day of October, 1975.

/s/ LOUISE G. ANDERSEN
Notary Public

General Notary, State of Nebraska, Louise G. Andersen
My Commission Expires May 22, 1977

IN THE SUPREME COURT OF NEBRASKA

No. 40471

THE STATE OF NEBRASKA, ex rel NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS; UNITED PRESS INTERNATIONAL; NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA CHI; KILEY ARMSTRONG; EDWARD C. NICHOLLS; JAMES HUTTENMAIER; WILLIAM EDDY; Relators,

vs.

THE HONORABLE HUGH STUART, Judge, District Court of Lincoln County, Nebraska, Respondent.

Petition

The petition of the above-named Relators, hereinafter referred to as "Petitioners", applying for a Writ of Mandamus (and included therein a common law Writ of Prohibition, if allowed by this Court in this original action) and for a Stay Order for the purpose of having this court enter an order vacating and holding for naught the order of the District Court in and for Lincoln County, Nebraska, in the case *The State vs. Simants*, No. B-2904, entered October 27, 1975, by the Honorable Hugh Stuart, the Respondent. In support of this petition, Petitioners respectfully show the court as follows:

1. Petitioners in this case are Nebraska newspaper publishers and owners, national newswire service owners, media associations, the owner and operator of a radio station, and the individual Petitioners are employees of said Petitioners, as follows: Kiley Armstrong is a staff member of the Associated Press in Omaha; Edward C. Nicholls is Chief Correspondent for Associated Press in Nebraska; James Hut-

tenmaier is an employee of radio station KODY in North Platte, Nebraska; and William Eddy is a reporter for the NORTH PLATTE TELEGRAPH. The Petitioners are engaged primarily in the business of gathering and reporting, publishing and disseminating local, national and international news, as well as other matters of interest, to their readers or listeners and to the general public in the interest of maintaining an informed citizenry. Your Petitioners have been ordered by the District Court in and for Lincoln County, Nebraska, the Respondent Judge Hugh Stuart presiding, to refrain from publishing a broad spectrum of information much of which was and is a matter of public record related to the case of *State vs. Simants*. The factual background leading up to this order is set out in this petition.

2. On or about October 18, 1975, Henry Kellie, age 66; his wife, Marie, age 57; their son, David, age 32; David's two children, Daniel (5) and Deanne (6); and the elder Kellie's granddaughter, Florence Kay, age 10, were allegedly murdered in the Kellie home at Sutherland, Nebraska, and one or more of the alleged murders were purportedly in connection with the perpetration of or attempt to perpetrate one or more sexual assaults.

3. Thereafter, on or about October 19, 1975, Erwin Charles Simants was arrested by the Lincoln County Sheriff and later charged with six counts of murder in the first degree in conjunction with the perpetration of or attempt to perpetrate one or more sexual assaults, all as is set forth in the complaint and amended complaint filed in the County Court of Lincoln County, Nebraska, copy of which is attached hereto as Exhibit "A".

4. At the arraignment hearing before the County Court, several employees of Petitioners were in attendance. Part of the hearing was conducted openly while part of the hearing was closed by the court to the press and the public.

5. The preliminary hearing was scheduled in the County Court of Lincoln County, Nebraska at 9:00 A.M. on October 22 for a determination as to whether Simants should be bound over to the District Court of Lincoln County, Nebraska, on the charges set forth in the amended complaint. On or about 7:00 P.M. on October 21, the prosecution filed a motion with the County Court requesting that a restrictive order be entered by that court. A copy of that motion is attached hereto as Exhibit "B". Earlier that afternoon the Honorable Ronald A. Ruff, either personally or through his Associate County Judge, Dorothy Kriz, notified various members of the press that he might have something that might be of interest to them that evening and wanted them to come to his court at about 7:30 P.M. When the press arrived with their counsel, Harold W. Kay, at approximately 7:15 P.M. on October 21, they were directed by the County Judge, through the Associate County Judge, to leave the second floor of the Lincoln County Courthouse, where the County Court is located, and go down to the first floor of the courthouse. Included among those who were requested to leave, due, perhaps, to a misunderstanding, was counsel for some of the media currently reporting on the murder case. Thereupon, hearing commenced in the County Court among Judge Ruff, the prosecuting attorney and defense attorney concerning the above-described motion. At or about 7:30 P.M. the defendant was brought to the courtroom and the press and public were allowed to return. At about that time the attorneys for the defense joined in the motion of the prosecution and further made an oral motion requesting that the restrictive order be broadened and that the preliminary hearing be closed to the public and press. Without any evidentiary hearing, but after arguments by counsel for the prosecution, counsel for the defense and counsel for certain of the media, Judge Ruff indicated orally that he would enter an order in response to the motions of the defense and prosecution. The following morning, on October 22, Judge Ruff entered

the order, a copy of which is attached hereto as Exhibit "C", which order, in essence, found that prejudicial publicity "would make difficult, if not impossible, the impaneling of an impartial jury in the event the defendant is bound over to the District Court for trial . . ." and imposed a broad restriction on all attorneys, parties, witnesses, court personnel and all other persons "present in court" during the preliminary hearing from transmitting most of that information to anyone. The order contained additional restrictive provisions apart from the preliminary hearing.

6. That at about 8:30 P.M. on October 22, Harold W. Kay, as attorney for the media, requested a conference or hearing with Judge Ruff for the purpose of discussing modification or vacation of the above-described order but the County Judge indicated he would proceed with the preliminary hearing.

7. On October 22, the preliminary hearing was held, commencing about 9:00 A.M., before Judge Ruff in the County Court of Lincoln County, Nebraska, and at this hearing, which was open to the public and at which employees of the various Petitioners and certain of the above-named individual Petitioners were present, testimony was taken from various witnesses which *inter alia* disclosed much factual information concerning the background for the alleged crimes set forth in the amended complaint copy of which is attached hereto as Exhibit "A". Reporting of much of the testimony given at this open-court hearing is enjoined by order of the District Court of Lincoln County, Nebraska, as hereinafter more fully described. Because publication thereof is so enjoined, further details relating to that testimony are not set forth in this petition. However, your Petitioners are filing various affidavits with this court setting forth the factual information adduced from various witnesses at the public hearing. The facts and statements contained in said affidavits are incorporated herein by reference.

S. In the afternoon of October 23, your Petitioners filed an application with the District Court of Lincoln County, Nebraska, copy of which is attached as Exhibit "D" and is by this reference incorporated herein. Later that afternoon the District Court entertained the aforesaid Application to Intervene in the Simants case and to void the County Court's order as well as the motions by the counsel for defense and prosecution to close all future pretrial proceedings in the District Court and to continue in force the County Judge's order or to impose other restrictive orders. A hearing was held about 8:00 P.M. of the evening of October 23 and an evidentiary hearing was first held on said application of your Petitioners at which time the Petitioners showed *inter alia* that the order of Judge Ruff was entered without any evidentiary hearing. Thereafter, an evidentiary hearing was held on the motions of defense counsel at which time defense counsel undertook, through the testimony of Judge Ruff, to establish an evidentiary basis for the County Court's order. In fact, at this hearing, there was no showing of danger to the administration of justice or to the denial of a fair trial to the defendant, in the event any of the defense motions were not granted. Judge Ruff testified, in effect, that he had read four news articles submitted in evidence and had based his order on his awareness of the widespread publicity in the Simants case and the likelihood of continued public interest in those proceedings. There was no evidence of misconduct of any kind on the part of the press. Your Petitioners have filed a praecipe requesting that the testimony at that hearing be prepared immediately by the court reporter. At the close of the hearing, which included oral argument by all counsel, Judge Stuart granted Petitioners' Motion to Intervene, denied defense counsel's motion to close any pretrial District Court proceedings, adopted as his own on an interim basis the County Court's restrictive order and continued all other motions.

On October 27, after further discussion between Judge Stuart and various counsel in the Judge's chambers, Judge Stuart appeared in open court in the District Court of Lincoln County, in a public session attended by the defendant, counsel, the press and the public and terminated the County Court order. Thereupon the Judge read in open court the order which is the subject matter of this original action to this court. The full order is attached as Exhibit "E" to this petition. This order is of public record and available for inspection by any person in the District Court of Lincoln County, Nebraska. In the order, the District Court purported to find that "because of the nature of the crimes charged in the Complaint [murder and sexual assault] . . . there is a clear and present danger that pre-trial publicity could impinge upon the defendant's right to a fair trial . . ." Based on this purported finding, the Petitioners and each of them:

"THE COURT FURTHER ORDERS that pre-trial publicity shall be in accordance with the following order:

The standards set forth in The Nebraska Bar-Press Guidelines for Disclosing and Reporting of Information Relating to Imminent or Pending Criminal Litigation are approved and are hereby adopted as the Court Order for dissemination of information in this case; that a copy of such guidelines is attached hereto and by this reference made a part hereof. Such guidelines should be clarified as follows:

1. It is hereby stated the trial of the case commences when a jury is empaneled to try the case, and that all reporting prior to that event, specifically including the preliminary hearing is "pre-trial" publicity.
2. It would appear that defendant has made a statement or confession to law enforcement officials and it is inappropriate to report the existence of such statement or the contents of it.

3. It appears that the defendant may have made statements against interest to James Robert Boggs, Amos Simants and Grace Simants, and may have left a note in the William Boggs residence, and that the nature of such statements, or the fact that such statements were made, or the nature of the testimony of these witnesses with reference to such statements in the preliminary hearing will not be reported.
4. The non-technical aspects of the testimony of Dr. Miles Foster may be reported within the guidelines and at careful discretion of the press. The testimony of this witness dealing with technical subjects, tests or investigations performed or the results thereof, or his opinions or conclusions as a result of such tests or investigations will not be reported.
5. The general physical facts found at the scene of the crime may be reported within the guidelines and at the careful discretion of the press. However, the identity of the person or persons allegedly sexually assaulted or the details of any alleged assault by the defendant will not be reported.
6. The exact nature of the limitations of publicity as entered by this order will not be reported. That is to say, the fact of the entering of this order limiting pre-trial publicity and the adoption of the Bar-Press Guidelines may be reported, but specific reference to confessions, statements against interest, witnesses or type of evidence to which this order will apply will not be reported."
9. The order imposes no restriction on others than those reporting the facts associated with the case and it leaves members of the public and officers of the court, who have been in attendance at the preliminary hearing or at the hearing on October 27, 1975, when Judge Stuart read the order in open court, free to disseminate what they heard

and saw. In effect, this order puts the press, as represented by your Petitioners herein, in an inferior position with respect to their exercise of first amendment rights to the general public or even court officers and personnel who attended these hearings in open court.

10. Most or all of the information detailed in Paragraphs 2 through 6 of the District Court order is information that was either publicly testified to in open court during the preliminary hearing or is contained in documents filed in that court, which are matters of public record in the State of Nebraska and to which any interested citizen may have access even to the present time.

11. To the extent that is possible to determine the practical effect of the District Court's "adoption" of the Nebraska Bar-Press Guidelines for Disclosure and Reporting of Information Relating to Imminent or Pending Criminal Litigation, it would appear that the order converts into a direct prior restraint those voluntary guidelines which, on their face, place all decisions on what and what not to publish within the discretion of the press. The use of the guidelines in the order perverts the spirit and intent of the guidelines since they were never intended to be law thrust upon the press by the bar. Rather, they were to be general guides to aid the press in its day-to-day reporting of criminal matters and to assist law enforcement personnel in disseminating information. Moreover, compliance with the guidelines was intended to be entirely voluntary and the interpretation of the guidelines was left to the press. The language of the guidelines was not designed for inclusion in court orders; rather, the guidelines set forth statements of broad general principle subject to varying interpretations. Including the guidelines in a court order converts them into law, without clear demarcation, to be interpreted by the courts. The incorporation of these vague and indefinite guidelines constitutes an abuse of discretion and may interfere with the relationship of the press, bar,

and the courts and is not in the best interests of the administration of justice in this state.

12. The order of the District Court is to remain in effect for an apparently indefinite period of time. Although no accurate estimate could be made, experience indicates that the trial of the Simants case is at least several months away and could conceivably be delayed for an indefinite period, given the vicissitudes of such litigation. Accordingly, the order will apparently have the effect both of prohibiting the publication of factual information previously testified to in open court or contained in official court documents or public records and of prohibiting similar factual information from being published which may come into public domain in future pretrial proceedings or in documents yet to be filed as a matter of public record in the Simants case. If taken literally, the District Court's order would also appear to operate as a direct restraint on the publication of editorial comment as is the case based upon information received by the press and sources other than open court hearing or public court records.

13. On the 31st day of October, 1975, counsel for your Petitioners attempted to make oral motion to Judge Stuart to stay his order of October 27. Judge Stuart was away from the Lincoln County courthouse and was presiding over judicial proceedings in Ogallala, Nebraska. Upon reaching Judge Stuart in Ogallala, an oral request was made that Judge Stuart stay his said order and the Judge indicated that he did not want to act thereon until Monday, November 3, when he would return to his court in North Platte, Nebraska.

14. At all times since the six deaths occurred as described above, your Petitioners have fairly, responsibly and accurately reported the news relative to this unfortunate incident. Petitioners submit that the circumstances relating to and the manner of the deaths of these six indi-

viduals is and remains of critical importance as a news/press event in terms of interest to the public of this State in that such events have significant effect on any community. Your Petitioners suggest that a responsible and vigorous press, radio and television, reporting and publishing details of such events, results in an informed public and insures the public's right to know. Thereby, the public is able to formulate remedies and proposals for the possible elimination or reduction of the problems which may explain the occurrence of such events. In addition, the performance of various public officials and the capabilities of this State's law enforcement program are directly involved in such incidents.

15. If the lower court is not immediately prohibited and restrained from implementing, executing or enforcing or attempting to implement, execute or enforce the said order, your Petitioners and the public will suffer irreparable harm, both great and immediate, due to the abridgement of Petitioners' freedom of speech, expression and press as guaranteed by the Nebraska Constitution, Article I, § 11 and § 13, and Amendments I, VI and XIV of the Constitution of the United States. Moreover, those who depend upon dissemination of the news by your Petitioners will be deprived of their access to the news arising out of an extremely newsworthy event, including the conduct of various public officials, the administration of general justice in the courts of this State and a significant aspect to the communities' law enforcement program. Although preliminary hearing and pretrial hearings are public events and although that which transpires in a courtroom is public property, the Judge has nevertheless promulgated an order which in its overbreadth will have the effect of prohibiting Petitioners from publishing news arising out of open court proceedings.

16. The order of the District Court is in violation, in addition to Sections 11 and 13 of Article I of the Con-

stitution of the State of Nebraska, to § 24-311 R.R.S. Nebraska, 1943, requiring that all judicial proceedings in this State be open. Denial of expression of publication or the events taking place in open court proceedings, as was done herein by the Lower Courts, is a significant interference with the laws and Constitution of this State requiring open judicial proceedings. Your Petitioners have abided by the respective orders of the County and District courts even though they submit such orders are void on their face. This was done only out of respect for the judicial processes of this State and the Petitioners now seek immediate relief from the order of the District Court to the extent that the order operates as a direct prior restraint on their publication of or editorial comments on the facts of the underlying criminal case and the complaint and other documents attached hereto as exhibits. Petitioners assert that the prohibition on prompt reporting of the news arising out of these public hearings and requiring that such reporting be held in abeyance until the trial, which may be months from now or possibly longer, is just as much a prior restraint, gag and chilling effect as would be an order permanently prohibiting the publication of such news.

17. The Petitioners have no adequate remedy at law.

18. The Petitioners are in immediate danger of irreparable harm by being held in criminal contempt of court for the reason that they seek to promptly report and publish the details of an open court proceeding.

19. Jurisdiction is conferred upon this Court as set forth in the statement filed under even date herewith, the terms and provisions of which statement are incorporated in this petition by reference.

WHEREFORE, your Petitioners pray the Court for an immediate hearing on the validity and constitutionality of the above order of the District Court of Lincoln County, Nebraska, dated October 27, 1975, and immediate relief

by Mandamus (and/or prohibition) from the direct prior restraint on publication imposed by that order. Your Petitioners further pray that an immediate stay be issued by this Court against said order and that said order be vacated and held for naught.

Respectfully submitted,

THE STATE OF NEBRASKA, ex rel; NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS; UNITED PRESS INTERNATIONAL; NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/ SIGMA DELTA CHI; KILEY ARMSTRONG; EDWARD C. NICHOLLS; JAMES HUTTENMAIER; AND WILLIAM EDDY

By: /s/ STEPHEN T. MCGILL
 Stephen T. McGill
 for MCGILL, KOLEY & PARSONAGE, P.C.
 Suite 217, 10050 Regency Circle
 Omaha, Nebraska 68114
 402-397-9988

Attorneys for Relators

STATE OF NEBRASKA
 COUNTY OF DOUGLAS, SS

KILEY ARMSTRONG, being first duly sworn, on oath deposes and says that she is one of the Relators herein; that she has read the foregoing Petition, knows the contents thereof, and that the statements therein contained are true as she positively believes.

/s/ KILEY ARMSTRONG
 Kiley Armstrong

Subscribed and sworn to before me this 31 day of October,
1975.

/s/ JAMES L. KOLEY
Notary Public

James L. Koley, General Notary, State of Nebraska
My Commission Expires October 10, 1976

IN THE SUPREME COURT OF NEBRASKA

Case No. 40471

THE STATE OF NEBRASKA, ex rel NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS; UNITED PRESS INTERNATIONAL; NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA CHI; KILEY ARMSTRONG; EDWARD C. NICHOLLS; JAMES HUTTENMAIER; WILLIAM EDDY; Relators,

vs.

THE HONORABLE HUGH STUART, Judge, District Court of Lincoln County, Nebraska, Respondent.

Petition in Intervention and Response of Erwin Charles Simants

COMES now Erwin Charles Simants and shows to the Court that he has and claims an interest in the matter in litigation in this suit and in the success of the respondent, the Honorable Hugh Stuart, Judge, District Court of Lincoln County, Nebraska, and that he has such interest pursuant to Section 25-328, R.R.S., 1943, and in support of this petition in intervention shows the following facts upon which he rests his claim, to-wit:

I.

Intervenor is presently charged in the Lincoln County District Court with six (6) counts of felony murder pursuant to Section 28-401, R.R.S., 1943, having been bound over for trial in said Court by an order of the County Court of Lincoln County, Nebraska under date of October 22, 1975.

II.

Intervenor and respondent further shows to the Court that trial by jury is set in the matter in which the State of Nebraska is plaintiff and Erwin Charles Simants is defendant for January 5, 1976.

III.

Intervenor and respondent herein shows to the Court that on October 21, 1975 he did consent to a motion filed by the County Attorney of Lincoln County, Nebraska seeking to place certain restrictions upon the reporting, publication, and dissemination of news materials from his preliminary hearing scheduled in the Lincoln County Court on October 22, 1975, and that in addition thereto on the 21st day of October, 1975, he did move that all matters preliminary to his trial in the Lincoln County District Court be completely closed.

IV.

On October 21, 1975 the Honorable Ronald A. Ruff, the duly elected and acting County Judge of Lincoln County, Nebraska entered an order restricting the dissemination of news and publication of such news from the preliminary hearing to be held on October 22, 1975. A copy of said order is attached hereto, marked Exhibit A, and pleaded as if set forth in full at this point herein.

V.

Intervenor and respondent further shows to the Court that on October 23, 1975 he did again renew his claim in the Lincoln County District Court for closed hearings prior to a trial scheduled in his matter in which he is defendant and the Honorable Hugh Stuart, District Judge of the District Court of Lincoln County, Nebraska, entered an order placing certain restrictions upon the dissemination

and reporting of news from all matters preliminary to the actual trial. A copy of his order entered under date of October 27, 1975 is marked Exhibit B, attached hereto and pleaded as if set forth in full at this point herein. The intervenor and respondent herein again on October 23, 1975 moved before the Court to have all proceedings prior to trial completely closed.

VI.

Intervenor and respondent herein shows to the Court that prior to the time of his trial scheduled on January 5, 1976, he anticipates filing various motions with the District Court of Lincoln County, Nebraska, to include, but not limited to, motions to suppress, motions for a change of venue, motions to sequester witnesses, motions to be removed to the penal complex at Lincoln, Lancaster County, Nebraska for the purposes of having tests performed therein, and shows to the Court that in connection with such motions it is necessary to file affidavits and have evidentiary hearings, all involving the matters surrounding the incident which occurred at Sutherland, Nebraska on October 18, 1975, and that dissemination of these items of evidence prior to the trial, which said items of evidence may or may not be admissible at the time of trial, would be in derogation of his right to obtain a fair public trial before an impartial jury.

VII.

Intervenor and respondent herein further shows to the Court that the entry of the order herein by the Honorable Hugh Stuart, District Judge in and for Lincoln County, Nebraska, was correct and proper under the circumstances and that the Judge did in fact have the power and authority to close all preliminary hearings and further shows to the Court that the closing of the preliminary hearing is justifiable in that pursuant to law in the State of Nebraska a

preliminary hearing is such that evidence may or may not be introduced which would not be admissible upon a trial of this matter upon the merits, and that therefore, the dissemination of this evidence through the news media would be prejudicial to the defendant's rights in obtaining a fair public trial before an impartial jury.

VIII.

Respondent and intervenor herein shows that the District Judge of Lincoln County, Nebraska, Hugh Stuart, in entering the order herein considered several matters upon which he based his order of October 27, 1975. (1) The District Judge herein considered the fact the Lincoln County Judge, Ronald A. Ruff, had entered an order restricting the press, and that in making his decision in the instant case the District Judge considered that to upset the order of the County Judge would, in effect, give a license to the press to publish anything and everything which would result in prejudicing the rights of the defendant herein to a fair and impartial trial by jury. The District Judge herein also considered in his decision a quotation in the North Platte Telegraph of October 24, 1975, published some three days before the entry of his order herein to the effect that "there is some question among newsmen as to whether the guidelines cover testimony at a preliminary hearing.", a copy of said article is attached hereto, marked Exhibit C, and pleaded as if set forth in full at this point herein. In addition, the District Judge, in reaching his decision, considered the argument of one of the attorney's for the press, Harold Kay, who in his arguments to the Court prior to the entry of the order herein said "As far as Lincoln County itself, I think I can safely say that it would be hard to find 12 impartial jurors to try this particular case in Lincoln County." A certified excerpt from the transcript of the proceedings held in the Lincoln County District Court on October 23, 1975 is attached hereto,

marked Exhibit D, and pleaded as if set forth in full at this point herein. In addition thereto, the District Judge considered the statement of Mr. Stephen McGill, one of the attorneys for the petitioners in this matter, who in his arguments to the Court prior to the entry of any order herein said "but I'd let somebody go free who was guilty before I would deny freedom of speech." A certified copy of the excerpt from the proceedings held in the District Court of Lincoln County, Nebraska on October 23, 1975 is marked Exhibit E, attached hereto and pleaded as if set forth in full at this point herein.

IX.

Intervenor and respondent herein shows to the Court that it is necessary to have a restrictive order upon the dissemination of news and news material from all of the matters preliminary to the trial in the above entitled matter, and in support thereof says that Lincoln County, Nebraska has a population of 30,000 individuals and from which a jury must be chosen within the County, and that news media serving the County include 2 television stations, three radio stations, one local newspaper, and at least 2 newspapers that are circulated state wide.

X.

Intervenor and respondent further shows to the Court that he is entitled to a fair and impartial trial by jury, free from outside influences and to have a verdict of that jury based only upon evidence admissible at the time of trial.

WHEREFORE, defendant prays that relators petition be dismissed and that the order of the District Court of Lincoln County, Nebraska entered by the Honorable Hugh Stuart as of October 27, 1975 be affirmed by this Court.

ERWIN CHARLES SIMANTS, Defendant

By: /s/ LEONARD T. VYHNALEK
of BEATTY, MORGAN & VYHNALEK
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(308) 534-2120
His Attorneys

Supreme Court of Nebraska, Filed Nov. 24, 1975—George H. Turner, Clerk

IN THE SUPREME COURT OF NEBRASKA

Case No. 40471

THE STATE OF NEBRASKA, ex rel NEBRASKA PRESS ASSOCIATION; OMAHA WORLD-HERALD COMPANY; THE JOURNAL-STAR PRINTING CO.; WESTERN PUBLISHING CO.; NORTH PLATTE BROADCASTING CO.; NEBRASKA BROADCASTERS ASSOCIATION; ASSOCIATED PRESS; UNITED PRESS INTERNATIONAL; NEBRASKA PROFESSIONAL CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS/SIGMA DELTA CHI; KILEY ARMSTRONG; EDWARD C. NICHOLLS; JAMES HUTTENMAIER; WILLIAM EDDY; *Relators*,

vs.

THE HONORABLE HUGH STUART, Judge, District Court of Lincoln County, Nebraska, *Respondent*.

Petition in Intervention and Response of the State of Nebraska

COMES now The State of Nebraska by and through Milton R. Larson, the duly elected, acting, and appointed County Attorney in and for Lincoln County, Nebraska, and shows to the court that it has and claims an interest in the matter in litigation in this suit and in the success of the respondent, the Honorable Hugh Stuart, Judge, District Court of Lincoln County, Nebraska, and that it has such interest pursuant to Section 25-328, R.R.S., 1943, and in support of this petition in intervention shows the following facts upon which it rests its claim, to-wit:

I.

Intervenor, State of Nebraska, by and through Milton R. Larson, Lincoln County Attorney, has charged one Erwin Charles Simants with six counts of first degree murder pursuant to Section 28-401 R.R.S., 1943, and said defendant

has been bound over for trial in said Court by an order of the County Court of Lincoln County, Nebraska, under of October 22, 1975.

II.

Intervenor and respondent further shows to the Court that a trial by jury has been set in this matter in which the State of Nebraska is plaintiff and Erwin Charles Simants is defendant for January 5, 1976.

III.

Intervenor and respondent herein shows to the Court that on October 21, 1975, Milton R. Larson, Lincoln County Attorney, did file a motion seeking to place certain restrictions upon the reporting, publication, and dissemination of news material from the preliminary hearing herein, scheduled in the Lincoln County Court for October 22, 1975, at the hour of 9:00 a.m.

IV.

On October 21, 1975, the Honorable Ronald A. Ruff, the duly elected and acting County Judge of Lincoln County, Nebraska, entered an order restricting the dissemination of news and publication of such news from the preliminary hearing to be held on October 22, 1975.

V.

Intervenor and respondent further shows to the Court that on October 23, 1975, the Honorable Hugh Stuart, District Judge, Lincoln County, Nebraska, entered an order placing certain restrictions upon the dissemination and reporting of news from all matters preliminary to the actual trial.

VI.

Intervenor and respondent herein further shows to the Court that evidentiary matters adduced at the preliminary hearing herein held in the Lincoln County Court on the 22nd day of October, 1975, may or may not be admissible at the time of the trial and the dissemination of certain testimony given at said preliminary hearing would be detrimental to the right of the State of Nebraska, and its people to effective prosecution of its laws.

VII.

Intervenor and respondent further shows to the Court that the entry of the order herein by the Honorable Hugh Stuart, District Judge, in and for Lincoln County, Nebraska, was correct and proper under the circumstances.

VIII.

Respondent and intervenor herein shows that the District Judge of Lincoln County, Nebraska, Hugh Stuart, in entering the order herein considered several matters upon which he based his order of October 27, 1975. (1) The District Judge herein considered the fact that Lincoln County Judge, Ronald A. Ruff, had entered an order restricting the press and that in making his decision in the instant case, the District Judge considered that to upset the order of the County Judge, would in effect give a license to the press to publish anything and everything within their knowledge, which may present a clear and present danger to the empaneling of an impartial jury. The District Judge, herein also considered in his decision a quotation in the North Platte Telegraph of October 24, 1975, published some three days before the entry of his order herein to the effect that, "There is some question among newsmen as to whether the guidelines cover testimony at a preliminary hearing." In addition, the District Judge, in reaching his deci-

sion, considered the argument of one of the attorney's for the press, Harold Kay, who in his arguments to the Court prior to the entry of the order herein said "As far as Lincoln County itself, I think I can safely say it would be hard to find twelve impartial jurors to try this particular case in Lincoln County." In addition, thereto the District Judge considered the statement of Mr. McGill, one of the attorney's for the petitioners in this matter, who in his arguments to the Court prior to the entry of any order herein said "but I'd let somebody go free who was guilty before I would deny freedom of speech."

IX.

Intervenor and respondent herein shows to the Court that it is necessary to have a restrictive order upon the dissemination of news and news materials from all of the matters preliminary to the trial in the above entitled matter, and in support thereof further says that Lincoln County, Nebraska, has a population of 30,000 individuals and from which a jury must be chosen within the County, and that news media serving the County include two television stations, three radio stations, one local newspaper, and at least two newspapers that are circulated state wide.

X.

Intervenor and respondent further shows to the Court that it is entitled to the effective enforcement of its laws within the confines of the judicial system and that the people of the State of Nebraska are entitled to prompt and expeditious handling of criminal cases.

WHEREFORE, your intervenor and respondent prays that relators petition be dismissed and that the order of the District Court, of Lincoln County, Nebraska, entered by the Honorable Hugh Stuart, on October 27, 1975, be affirmed by this Court.

THE STATE OF NEBRASKA

By /s/ MILTON R. LARSON

Milton R. Larson

Lincoln County Attorney

Lincoln County Courthouse

North Platte, Nebraska 69101

(308) 534-4350

[Certificate of Service omitted in printing]











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North Platte, Nebraska

2 Sections, 16 Pages

15¢ Local

Special session begins, followed by confusion

By ERIC KRAMER
Associated Press Writer

LINCOLN, Neb. (AP) — "We're off to a real good start in enhancing our image," said Sen. John Cavanaugh of Omaha.

His facetious remark came as the legislature began stumbling over itself shortly after the special session began Wednesday.

Shortly after Gov. J. J. Exon said, "The financial crunch that faces Nebraska is a manageable one if we have the courage to make the sacrifices, take the heat, and intelligently chart our restrained course for the immediate and long-range future," the unicameral broke down in confusion.

Senators promptly voted 36-7 against adjourning immediately and decided not to discuss bills other than the four the governor presented.

Unfortunately, Sen. Wally Barnett's motion only said other bills could not be discussed and Lt. Gov. Gerald Whelan ruled that other bills could be introduced and possibly passed, but not discussed.

At that point, Omaha Sen. Eugene Mahoney, chairman of the Legislative Council Executive Board took control, set committee hearings on the four Exon bills and told his fellow senators to go home until 10 a.m. Nov. 3.

The Appropriations Committee is scheduled to begin three days of public hearings Wednesday on an Exon proposal to cut state expenditures by

\$10.4 million. Exon's cuts would come as a three percent across-the-board reduction in the expenditures of state agencies to save \$6.9 million. The rest of the money would come from a \$2.5 million reduction in what Exon administration officials called a mistaken appropriation to the State Department of Education and a \$1 million reduction in the governor's emergency fund. The bill is LB6.

At the same time, the Appropriations Committee will also hold public hearings on another bill which would give the state treasurer authority to withhold payments if the state treasury runs low. The bill, LB3, establishes state employee salaries as the No. 1 priority, but as a practical matter, says payments to schools and local governments will be proportionately reduced when there is a cash shortage. They would receive the remainder of their money the following month when more cash comes into the treasury.

Exon said he would not cut aid to schools and local governments, only delay it. He also said he would not cut appropriations for the Department of Corrections, because of an increase in prisoners.

Exon predicted the state would find itself \$11 million short in January and April with \$9 million deficits in February and March.

The Revenue Committee is scheduled to start two days of hearings at 9 a.m. Wednesday on a bill which would change

the formulas the State Board of Equalization will use when it sets tax rates in November.

The bill, LB4, basically allows the board to ignore factors that would promote budget surpluses and allow it to set tax rates which would barely avoid a treasury deficit.

If the bills come out of committee, the entire legislature will consider them a week from Monday. Another bill, LB5, which appropriates \$5,000 for the special session, will also be ready for floor debate at that time.

Three other bills introduced by senators apparently will die at the end of the special session without going to committee.

One, introduced by Bellevue Sen. Frank Lewis would have prevented a 1976 tax increase. Another Lewis proposal would have put the legislature in charge of setting tax rates.

Bellwood Sen. Lorain Schmit introduced a bill which would have purchased John F. Kennedy College in Wahow and turned it into a veterans home.

Senators voted down an invitation to the Nebraska Educational Television Network to provide statewide TV coverage of the committee hearings. Mahoney said he may decide next year to limit legislative television coverage to two days per year.

"As we deliberate in this special session, and look forward to future regular sessions, we must insist that the plight of New York City and the federal government will not be ours," Exon said. "Nebraska can escape such situations if we are intelligently perspective, plan our work, and work our plan."

Winter arrives in Panhandle

By The Associated Press

Winter-like weather arrived in western Nebraska Thursday.

The State Patrol even reported slippery road conditions in some Panhandle areas early Thursday.

The storm moved from the Rockies into the western part of the state and indications were that moisture connected with the storm would bring an end to the long dry spell in the state.

The weather map showed a strong cold front stretching from a low in southeastern Minnesota across southeastern Nebraska to another low in extreme southeastern Colorado.

The weather map featured early Thursday a sharp cold front lying across northwest Iowa and southeast Nebraska. The front was expected to become stationary across western Iowa and central Kansas Thursday night.

As a result, heavy snow warnings have been issued for the Nebraska Panhandle through Friday, with about six inches of snow expected by Friday morning.

Rain or thundershowers were expected to develop over the remainder of Nebraska.

Low temperatures Thursday night should range from the 30s west to near 50 east, with highs Friday in the 30s west and the mid 50s to low 60s east.



A last hurrah for summer

With winter approaching, Kent Andresson of rural North Platte romps through the crunchy leaves of autumn on a golden afternoon. Soon the cold winds of November will strip the trees. Indian Summer will fade, and the earth will slip into the sleep of winter. But until then, autumn is meant for enjoying. Telegraph colorphoto by Wayne Jacobsen.

Simants to stand trial

Erwin Charles Simants, charged with murder in the death Saturday of six Sutherland residents, will stand trial probably "around the first of the year," Lincoln County Attorney Milton Larson said Wednesday.

Court Judge Ronald Ruff Wednesday afternoon bound Simants over to District Court for trial following the conclusion of a four-hour preliminary hearing. Ruff told the defendant that the evidence presented showed beyond a reasonable doubt that the crimes alleged had been committed. Further, the

First-degree sexual assault was defined in LB 23 passed by the 1975 Legislature. The bill, the first revision of Nebraska's rape statutes in 100 years, replaced the word "rape" in the law with two degrees of sexual assault.

First-degree sexual assault is defined in the law as "sexual penetration" of the victim.

Simants is accused of fatally shooting Henry Kellie, 66; his wife, Marie, 57; their son, David, 32; and three grandchildren, Daniel, 5, Deanne, 6, and Florence, 10.

The preliminary hearing was completed Wednesday afternoon about the same time that funeral services for the six Kellies were ending at Sutherland.

Judge Ruff again denied bail for Simants. "Six persons are dead, including three children," he told Simants, who was standing before him. He said the "magnitude" of the crime was such that bail could not be justified.

The prosecution called four more witnesses to stand Wednesday afternoon, including three State Patrol investigators and County Sheriff Gordon Gilster.

Their testimony cannot be reported, however, since Ruff issued Wednesday morning a "restricted coverage order" barring press reports of the testimony. The defense did not call any witnesses to the stand.

In the morning, the prosecution called five witnesses: Dr. Miles Foster, a North Platte pathologist; Mrs. June Lindstrom, emergency medical technician for the Sutherland ambulance; Herb Meissner, Sutherland mayor and a friend of the Kellies; James Robert (Butch) Boggs, 13-year-old nephew of Simants and neighbor of the Kellies; and Amos Simants, father of the accused.

For the first time in three court sessions, Simants was not handcuffed during Wednesday's hearing. Both Sunday morning when he was arraigned and Tuesday night when motions to restrict press coverage were heard, Simants was handcuffed to the wrist of Gilster.

Yesterday, Simants sat beside his attorneys, Public Defender Keith Byatrom and Assistant Public Defender Leonard Vyhalek. His sitting position and facial expression changed little during the four hours.

When the hearing was completed, Deputy Sheriff Bob Smith offered Simants a cigarette and he readily accepted it. Then the deputy handcuffed Simants' wrist to his own and the accused was returned to jail.

Caroline Kennedy unhurt in explosion

LONDON (AP) — Caroline Kennedy narrowly escaped death or injury and was reported "very shaken" in a bombing today that blew up the car of her British host, an anti-terrorism campaigner.

The bomb, which senior detectives said they believed was planted by the Irish Republican Army, killed one of Britain's leading cancer specialists, who was walking nearby, and wounded seven other persons.

The estimated five to seven pounds of explosives blew up the white jaguar outside the home of Conservative politician Hugh Fraser, where Miss Kennedy, daughter of the late President John F. Kennedy, was staying. The two had been planning to leave the house at about the time of the blast.

The explosion shattered windows of the four-story townhouse. Fraser's forehead was slightly cut by flying glass. He said Miss Kennedy was uninjured but "very shaken."

The 8:53 a.m. blast maimed and killed Prof. Gordon Hamilton Fairley, a neighbor, as he was taking his poodle for a walk.

Seven other persons, including a Filipino woman who worked as a cook and housemaid for Fraser, suffered minor injuries.

Fraser and the 17-year-old Miss Kennedy had been planning to leave the house at about the time of the blast but a telephone call from a fellow member of Parliament kept them inside, Fraser said.

"Normally I would have been in the car when this happened but I was on the telephone," said Fraser, who in his public speeches has taken a tough stance against terrorism. The bomb had been placed under his car.

"There is no doubt it was meant for me — somebody obviously wants to blow me up," Fraser told newsmen and added: "I'm not surprised. I can think of a lot of people who would want to blow me up."

Miss Kennedy is living at Fraser's home while studying art at Sotheby's auction house. She was due for classes at 10:30 a.m., an hour and a half after the bombing, but a spokesman at Sotheby's said a member of the Fraser household telephoned that she would not attend today.

The bombing occurred in Campden Hill Square, a tree-lined area of elegant old town houses in the fashionable West Kensington residential district.

Police said one theory was that the bombing was in revenge for the life sentences given three Irishmen and an 18-year-old English girl on Wednesday morning at the Old Bailey Criminal Court for the killing of seven persons in the bombing of three pubs last October.



VICTIMS' FUNERAL — Caskets containing the bodies of Mr. and Mrs. James H. Kellie, their son, David, and their three grandchildren

are placed in a convoy of six hearses following services Wednesday at Sutherland.

Sutherland turns out for services

SUTHERLAND — Rest home residents in wheel chairs and youngsters in blue jeans were among a crowd estimated at nearly 1,000 who filled the flower-banked Sutherland high school gym Wednesday afternoon for the funeral of six members of a local family slain Saturday.

But there was "no hatred or rebellion" in the hearts of the survivors, said the Rev. Mrs. Verneeda Brown of the Wesleyan Church at Arthur. She is the mother-in-law of Mrs. Audrey Brown, only surviving daughter of Henry Kellie, 66, and his wife, Marie, 57, who were slain in their home Saturday, along with their son, David, 32, their

granddaughter, Florence, 10, and David's two children, Daniel, 5, and Deanne, 6.

Awaiting district court trial on six counts of first degree murder is a neighbor, Erwin Charles Simants, 39.

"This has been a hard assignment handed to me today," said Mrs. Brown, whose voice trembled as she recounted how her and the Kellies' children had grown up together.

"There have been tragedies before...there will be after this one," she said, but nothing of this magnitude had struck the community before.

"I don't know what I'm going to do without him," he said.

The crowd was generally composed during the hour-long service which concluded at the rural Sutherland cemetery on a hill south of town where the six victims were laid in two graves.

The motion says Ruff's order violates Amendments 1, 4 and 14 of the U.S. Constitution; Article 1, Sections 8, 11 and 13 of the Nebraska Constitution; and Section 34-311 of Nebraska statutes.

The motion notes that, "Public trial is a basic tenet of our legal heritage," and adds, "Equally basic to our system is the free interchange of information concerning our judicial system."

The motion says Ruff's order "in effect, denies a public hearing by silencing all of those present; and the County Court's blanket gag rule is virtually unknown to our system of justice." Noting that the order also prohibits

any party to the case, law enforcement officials, public officers, attorneys, witnesses and news media from "disseminating any information" concerning the case, apart from the preliminary hearing, the motion says:

"(The order) smacks of precensorship."

With the resulting evil of muzzling of a free press and it would even, apparently, prohibit the public and the press from the non-official investigative rights which have heretofore been assumed to be a part of our judicial system and a right of our society."

Earlier, G. Woodson Howe, executive assistant to the president of the Omaha World-Herald, said, "For possibly the first time in Nebraska, a judge has ordered that the public be deprived of a timely account of what goes on in a public courtroom."

The effect of Judge Ruff's order is to deny the people of the State of Nebraska their right to observe the workings of the criminal justice system," he said.

Howe, who is also chairman of Media of Nebraska, a coalition of print and broadcast news media, added, "Courts are public institutions. Each phase of a trial should be a public event. The inevitable result of censored court proceedings is to deny facts to the public and to breed suspicion, rumor and speculation."

Larry Walklin, president of the Nebraska Society of Professional Journalists-Sigma Delta Chi, said the order deprives citizens "of their legal right of access to the criminal justice system."

The motion says Ruff's order "in

THE TELEGRAPH

Nebraska

2 Sections, 18 Pages

Monday,
October 20
293rd day of 1975

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Sunday in mass murder

A preliminary hearing has been scheduled for 9 a.m. Wednesday in Lincoln County Court for Erwin Charles Simants, 29, of Sutherland, charged Sunday with six counts of first degree murder. At the request of County Attorney Milton Larson, Judge Ronald Ruff ordered Simants held without bail.

Simants is accused of killing six members of the Hesery Kellie family in the Kellie home on the north edge of Sutherland Saturday night. Five persons were found dead in the home, while the sixth died shortly after being admitted to Great Plains Medical Center in North Platte.

The victims:

—James Hesery Kellie, 66, a semi-retired farm laborer;

—His wife, Audrey Marie Kellie, 57, a cook at Moore Memorial Nursing Home in Sutherland;

—Florence Marie Kellie, 10, a granddaughter adopted by the Kellies. Florence's mother, Jennie Kellie Rowley, was killed in a car accident about nine years ago.

—David LeRoy Kellie, 22, one of three Kellie children, an employee of Hershey Mills. A sister, Audrey, is the only surviving child.

—His son, Daniel LeRoy Kellie, 5, a kindergarten pupil at Sutherland.

—Deanna Lynn Kellie, 7, a second grader at Ogallala, who lived with her mother in Ogallala. She was apparently visiting her father, who, with Daniel, had apparently gone to the Hesery Kellies for dinner.

The bodies of Mr. and Mrs. Kellie and those of the three children were found in Kellie's five-room frame house following an anonymous phone call to the Sutherland light plant shortly after 9 p.m. Saturday.

Simants surrendered to Lincoln County Sheriff Gordon "Bop" Gilster and other law enforcement officers about 8:30 Sunday morning outside the home of Simants' sister and brother-in-law, Mr. and Mrs. William Boggs. Simants had recently been staying in the Boggs home, which is next door to the Hesery Kellie residence.

Judge Ruff denied bond for Simants in open court Sunday morning after hearing reasoning by Lincoln County Attorney Milton Larson in a closed session.

Larson requested the closed session, he said, because evidence presented might have resulted in prejudicial pre-trial publicity.

The bond request was made by Keith Bystrom, county public defender, appointed to the case by Raffi Leonard Vyhnaek, assistant public defender, was also appointed.

Ruff told Simants and his attorneys they could return to court within 24 hours to give more detailed reasons for seeking bond. But no request was made Monday morning.

Simants, a slight, dark-haired man dressed in blue-striped denim jail fatigues, sat with his head bowed as charges against him were read. He showed no emotion as he answered the judge's questions with a nod or a barely-audible voice. He said "No" when asked by Ruff whether he had any money to hire an attorney and gave the same answer when asked if he had any questions about his rights or the charges against him.

Following his arraignment, Simants was taken to Lincoln County jail.

Under Nebraska law, conviction on first-degree murder charges is punishable by death in the electric chair or life imprisonment. The last person executed under that law was Charles Starkweather in June 1959. Starkweather confessed to slaying 11 persons in 1958.

Simants' capture ended an uneasy night for Sutherland's 850 residents.

"I can't imagine it in a little town like this," said Clyde Linstrom, who said he talked with Simants' father, Amos, a short time after the shootings.

Standing near the Kellie home Saturday night, the elder Simants tearfully said, "My son killed five or six people here," according to Linstrom.

The elder Simants said his son told him of the slayings, Linstrom said. But when his father suggested he turn himself in, Erwin fled, according to Linstrom.

NP, Ogallala voters go to polls Tuesday

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North Platte and Ogallala voters go to the polls Tuesday to decide major school building bond issue proposals.

Ogallalaans are being asked to approve a \$6.5 million plan which would enlarge its West Fifth Elementary School, eliminate the 55-year-old West Ward Elementary and a 55-year-old junior high building, and construct a new, combined junior and senior high building on a 35-acre tract north of the town. The present senior high would be converted to an elementary school. The proposal would increase property taxes there about 24 mills in the first year of payment on proposed 30-year bonds, school officials estimate.

Polls at Ogallala are open from 7 a.m. to 7 p.m. MDT.

At North Platte, polls will be open from 8 a.m. to 8 p.m., CDT. A heavy turnout, based on an unusually large advance registration, is expected.

About 11 hours after the shootings occurred, Simants was captured outside the Boggs home. Gilster said Simants told him he wandered all night before going to the Boggs home Sunday morning. Gilster said Simants knocked on the Boggs' front door, but he was refused entry.

The Boggs alerted authorities that Simants was at their home and the capture was made minutes later as Simants tried to flee.

Simants gave up with little resistance and no weapon was found in his possession. During the night, a .22-caliber rifle believed used in the shootings was found near the Kellie home.

Gilster said Simants told him that he went to both the Rodeo and Longhorn bars in Sutherland after the shootings occurred and ordered a beer in each. "The patrons didn't know anything about it (the shootings)" at the time,

Gilster said.

Gilster said Simants later "wandered in the woods" near the scene of the crime. Sometime after midnight, a family half a mile east of the crime scene called the sheriff's office, saying that their dogs were barking and there might be a prowler. A half dozen officers checked the area but no one was found.

The call summoning authorities to the Kellie home Saturday night was made to the light plant, where emergency calls are received.

Floyd Paulman, who received the call at the plant, said the voice sounded like David Kellie.

"He (Kellie) said, 'We need an emergency unit.' I knew that voice because I've heard it many times before. The person turned away from the phone as if to talk to someone and then said (into the phone) where the emergency unit should go."

Paulman said the caller hung up without identifying himself.

Mrs. Linstrom, an ambulance attendant, was one of the first persons to arrive at the Kellie residence. A "very, very close friend" of the family, she said she had assisted with the delivery of Florence when the child was born.

When she got to the Kellie home, Mrs. Linstrom said, she saw two bodies in the living room. A third body was in a hallway, along with David. David was taken to the North Platte hospital but he died of two bullet wounds to the head shortly after arrival.

Two other bodies were found in a bedroom at the rear of the home.

Kellie paid Simants' fine

Hesery Kellie saved Erwin Charles Simants from jail Sept. 29, according to friends of Kellie.

According to the friends, Simants had been fined \$50 for public intoxication but was unable to pay the fine. The Rev. Neils Ibsen, Kellie's pastor, said Kellie paid the fine "so he (Simants) didn't have to lay it out in jail."

"Hesery was well liked and it was just his nature to help people," said the minister. "I don't know if he had ever paid anyone's fine before, but he'd shell out money to help in other ways."

Kellie, Pastor Ibsen said, had befriended Simants while he stayed with Simants' sister, Mrs. William Boggs, next door to the Kellie residence.

Co-operative effort on stories

Stories in today's Telegraph concerning the Kellie shootings in Sutherland Saturday night were compiled from reports by Telegraph staff members Bill Eddy, John Colone, Laura Poland, Roger Morris, Wayne Jacobsen and Lilly Freis, plus reports from Sally Schaff, Sutherland Courier-Times editor; Dean Terrill, Lincoln Journal reporter; Edward C. Nicholls, Associated Press writer; and Ramon F. Casas, United Press International reporter.

Colone and Mrs. Schaff were in Sutherland Saturday night and Sunday, while Eddy, Ms. Poland and Morris handled telephone calls, checked law offices and monitored law enforcement radio calls from North Platte. Reports were fed throughout the weekend to both AP and UPI, including eight photographs moved on the national wires.

Services for Kellies to be Wednesday

SUTHERLAND — Combined services for the six members of the Kellie families, who were slain Saturday night at the home of the senior Kellies at Sutherland, will be Wednesday at 2 p.m. at the Sutherland High School gymnasium.

Victims were James Hesery Kellie, 66; his wife, Audrey Marie Kellie, 57; their son, David LeRoy Kellie, 22; the latter's children, Deanna Lynn, 7, and Daniel LeRoy, 5; and the senior Kellies' granddaughter, Florence Marie Kellie, 10. All lived at Sutherland, except Deanna Lynn, who lived with her mother, Pamela Guggenheim of Ogallala.

Officiating at the services will be the Rev. Verneeda Brown of the Wesleyan Church of Arthur and the Rev. Neils Ibsen of the Wesleyan Church of Sutherland. The Rev. Brown is the mother-in-law of Mrs. Melvin (Audrey) Brown, daughter of James Hesery and Audrey Kellie. The Melvin Browns are of Boulder, Colo., formerly of North Platte.

Burial will be in the Sutherland Cemetery. Ryan and Tickle and Adams and Swanson Funeral homes of North Platte are in charge of the services and the bodies are lying in state at Ryan and Tickle Funeral home.

The caskets will not be open.

Memorials have been established.

James Hesery Kellie, a farm laborer, was born July 1, 1899, at Funk. He grew up in the Kearney and Minden area and moved from Imperial to Sutherland about 20 years ago.

He attended the Wesleyan Church at Sutherland.

Audrey Marie Kellie was born Feb. 14, 1918, in Perkins County and was employed as a cook at Moore Memorial Nursing Home.

She was a member of the Wesleyan Church at Sutherland.

Surviving the couple, in addition to the daughter, are four grandchildren.

Mr. Kellie's survivors also include three brothers, Lewis of Curtis, Mirrey of California and Elmer of Nebraska; two sisters, Mrs. Irene Peterson and Mrs. Stella Williams, both of Denver, Colo.

Other survivors of Mrs. Kellie are two brothers, Earl Matson of Grant and Eric Matson of Denver; and five sisters, including Mrs. Mary Stivers of Grant.

David LeRoy Kellie, who was born March 6, 1943, at Paxton, was a graduate of Sutherland High School in 1961. He had been in the Army Reserve and had worked at the ordnance plant in Grand Island before his employment at the Hershey Mills.

He was a member of the Wesleyan Church at North Platte.

His sister is his only survivor.

Deanna Lynn Kellie, who was born March 14, 1968, at North Platte, was a second grader at Ogallala Public Schools.

Daniel LeRoy Kellie, who was born Aug. 23, 1970, was a kindergartener at Sutherland Public School.

Surviving the two, besides their mother, Pamela Guggenheim, are grandparents, Mr. and Mrs. Floyd Ingram of Ogallala and Mr. and Mrs. Clarence Chessmore of Sutherland and great-grandparents, Mr. and Mrs. Leo Tegler of North Platte.

Florence Marie Kellie, who was born March 11, 1968, at Sutherland, was a fifth grade student at Sutherland. She was the daughter of the late Jennie Kellie Rowley, who died as the result of an auto accident nine years ago.

Sutherland faces the long night with fear

SUTHERLAND — Fear permeated the darkness of Saturday night and Sunday morning. Sutherland huddled behind locked doors while a murder suspect roamed the night.

Rumors had preceded over facts as uncertainty compounded the uneasy heartbeats of a community in terror. Sutherland was afraid of the dark.

Despite being the focal point for coverage by every major wire service, national radio and national television networks, Sutherland residents were uninformed about what was going on.

"Everyone in town who had a gun probably had it loaded and with them, or knew where it was," Lincoln County Deputy Sheriff David Suter said. "At least that's what people told me Sunday."

Not knowing exactly what was going on, Sutherland spent a restless night.

Area radio and television outlets were informed at 9:30 p.m. by law enforcement officials that five persons had been shot and killed in Sutherland, and that a sixth person had also been shot. Regular programming was interrupted with bulletins of the incident, along with a request to Sutherland residents to stay off the streets and to use caution before letting anyone enter their homes.

A dance was in progress at the American Legion Hall, and about 10 p.m. law enforcement officers told the dance promoter to close the event and to send everyone home. Sutherland was in the dark about events at the Henery Kellie home.

A long wait started Sutherland residents began a vigil that was to continue until Sunday morning when Erwin Charles Simants peacefully surrendered to Lincoln County Sheriff Gordon Gilster.

The first reports to the media indicated the murder suspect was a male, about five-foot-nine-inches tall, wearing a brown and white jacket and blue jeans. His approximate age was given as 33.

Several press conferences were held during the night. Deputy County Attorney Marvin Holscher doing all of the talking while County Attorney Milton Larson stood by. Sutherland Mayor Herbert Meissner held his own press conference, giving the first reported identification of the victims.

Hard, concrete facts about the incident at the Kellie home, were drawn out bit-by-bit throughout the night. Early Sunday a new description of the murder suspect was released. The age of the person being sought was given as 29, the height changed from 5'9 to 5'7 1/2, and a weight estimate of 130 pounds added to the original notation. Also added to the description were the facts the suspect had brown hair and a dark complexion.

Sutherland's city hall became a beehive of activity. Phone calls started coming in from New York and other national news services seeking information. City hall also became the headquarters for press representatives and law enforcement officers.

An anxious press contingent, promised they would be informed about events at the Kellie home, deserted the city hall location and received permission to stay near the Kellie home while Nebraska State patrol officers conducted their investigation. Holscher held a news conference in front of the Kellie home — giving a few basic facts about the murders.

He said the search was still being centered in the Sutherland area, and that no information had been received that the murder suspect had been sighted. He declined to release an identity of the victim or the person being sought. Holscher said that a gun had been found near the scene, but refused to comment on what type of weapon had been found. He did rule out a shotgun, but when pressed for more information, cut off the conversation and returned to the Kellie house.

Reports started coming from outside Sutherland that a sniper was being sought, but the reports turned out to be rumors, not fact. A program on national television Saturday night about the sniper who terrorized the University of Texas, contributed to the rumor of a sniper in Sutherland.

Among other rumors circulating in Sutherland was one that authorities had



SITE OF SLAYINGS — A state patrolman stands in front of the Henery Kellie home where Kellie, his wife, son and three grandchildren

were shot to death Saturday night. At left is the house where the suspect in the shootings had been staying.

been ordered to "shoot to kill" in the matter. "There was never any order like that," deputy Suter said. "We would much rather have gotten him the way we did. There are a lot of questions to be answered."

Phone lines in Sutherland were jammed. Local residents talking among themselves trying to piece together incidents of the night and those from out of town with friends and relatives in Sutherland trying to get long-distance lines to find out the situation.

Suter also said there was not a door-to-door search conducted as reported by some national media. "We searched a number of out-buildings and some residents called and wanted us to check out their homes, but we never did run a

door-to-door search." Three buses carrying Sutherland High School band students were greeted by law enforcement personnel at the school Saturday night when they returned from a music contest in Chadron. Law enforcement authorities stood by while concerned parents picked up their children. One woman asked a Nebraska Patrol trooper if he'd seen her daughter. She planned to take her entire family to Wallace Saturday night rather than staying in Sutherland.

"Sutherland residents were 'real good' about staying off the streets," Suter noted. "Maybe it was more out of fear than cooperation, but it had the same effect as our request to go home and stay put."



NEWS CONFERENCE — Lincoln County's Deputy County Attorney Marvin Holscher (with flashlight) held a press conference in front of the Henery Kellie home in the pre-dawn hours of Sunday while an investigation into the shooting deaths of six Sutherland residents was being conducted. Information was slowly released throughout the night. Erwin Charles Simants peacefully surrendered near the Kellie home Sunday morning, closing out a sleepless night for most residents of the community.

North Platte subscribers should receive their newspaper by 5:30 p.m. weekdays and by 7:30 a.m. Saturdays. If you do not receive your newspaper call your carrier or the North Platte Telegraph before 7 p.m. weekdays. On Saturday call before 11 a.m.

Sutherland's two bars, where it was later reported Simants went following the murders, closed earlier than usual. One bar stayed open, refusing admission to anyone unknown to them.

Nebraska State Patrol and Lincoln County squad cars patrolled the streets in Sutherland and cruised the country roads around Sutherland during the night. The presence of law enforcement gave a little comfort to Sutherland residents.

Some turned out their lights and spent an uneasy night. The lights in many Sutherland homes glowed brightly all night long.

The investigation at the Kellie home continued all night, with every possible scrap of evidence catalogued for future reference. About 3:30 a.m. the process of removing the bodies started.

Several reports of prowlers turned out to be false alarms, but authorities checked out every call before discounting any possible leads.

An extensive air and ground search was planned for Sunday, and authorities threw up roadblocks around Sutherland shortly before dawn, searching each car in case it contained the murder suspect.

William Boggs, brother-in-law of the murder suspect, chatted with news reporters in front of the Kellie home, as uncertain as anyone about the one unanswered question, "Why?"

Questions still remain

Many questions concerning the Kellie killings remain unanswered today. Some may be answered if and when Erwin Charles Simants stands trial. Others will always be a puzzle.

The ultimate question, of course, is why — why were the Kellies' lives taken? If a motive is known, law enforcement officers and the county attorney's office aren't saying, at least for now.

Also unanswered is how — how did someone enter the Kellie home and shoot six persons, apparently with a rifle?

Other questions:

— Who made the phone call to the light plant asking for an ambulance? Floyd Paulman, who received the call, said the voice sounded like David Kellie. But could it have been Kellie, if he had been shot twice in the head already?

Paulman also was quoted as saying the caller "turned away from the phone as if to talk to someone and then said (into the phone) where the emergency unit should go." Did the caller actually talk to one of the victims or someone else?

— Had the suspect, or the Kellies, for that matter, been watching the movie on television earlier that evening? The movie was "The Deadly Tower", a drama based on the incident in 1966 in Austin, Texas, when a sniper killed and wounded several persons.

Early reports on the Sutherland killings from law enforcement officers did not indicate that all the killings had taken place in one location and one deputy told a national radio network, "All we know is that there's someone up there and he's shooting people."

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